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Vol.34 **ACTUALITÉS - REPORT** No.3

CANADIAN CRIMINAL JUSTICE ASSOCIATION - ASSOCIATION CANADIENNE DE JUSTICE PÉNALE

SPECIAL ISSUE - NUMÉRO SPÉCIAL
HUMAN TRAFFICKING IN CANADA - LA TRAITE DES PERSONNES AU CANADA

WITH GUEST EDITOR - AVEC RÉDACTEUR INVITÉ - DR. JOHN WINTERDYK

CCJA INTERVIEW
L'ENTREVUE DE L'ACJP
WITH GUEST EDITOR - AVEC LE RÉDACTEUR INVITÉ
DR. JOHN WINTERDYK

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The JUSTICE REPORT contains information of value to Association readers and the public interested in matters related to the administration of justice in Canada. Opinions expressed in this publication do not necessarily reflect the Association's views, but are included to encourage reflection and action on the criminal justice system throughout Canada.

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L'ACTUALITÉS JUSTICE renferme des renseignements utiles aux lecteurs de l'Association et au public qui s'intéressent aux questions relatives à l'administration de la justice au Canada. Les opinions qui sont exprimées ne reflètent pas nécessairement les vues de l'Association, mais y figurent afin d'encourager à réfléchir et à agir sur la justice pénale dans tout le Canada.

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CANADIAN CRIMINAL JUSTICE ASSOCIATION
ASSOCIATION CANADIENNE DE JUSTICE PÉNALE

P• 101-320, av. Parkdale Ave., Ottawa, Ontario, Canada K1Y 4X9
T• 613 725.3715 | F• 613 725.3720 | E• ccja-acjp@rogers.com
ccja-acjp.ca

NANCY WRIGHT, EDITOR - ÉDITRICE E• ccjapubsacjp@gmail.com

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EDITORIAL

JOHN WINTERDYK, PhD
Guest Editor

As reflected in the title of this special issue, the focus is exclusively on human trafficking (HT) in Canada.[1] And while trafficking in persons knows no borders and is the second most profitable crime in the world, there has been no dedicated publication on HT in Canada that focuses on Canada's efforts to combat human trafficking. This issue includes seven articles by leading scholars from different regions of Canada, one by a Crown Prosecutor in Montreal, and three student articles.

In the first article, Linda MacDonald and Jean Sarson discuss the controversial and relatively obscure topic of non-State torture as it relates to human trafficking, presenting a compelling case and recommendations for its criminalization. While their work is increasingly recognized and acknowledged in several other countries, such is not the case in Canada. Winterdyk's article focuses on the relative status of Canada's performance in combatting HT domestically and internationally, emphasizing that there is still much to be done despite notable progress since 2006. Jessica Jahn and Yvon Dandurand's article takes a slightly broader approach, calling for involvement of civil society organizations and offering seven critical steps for their engagement in the review process of the UNTOC and its protocols. Next, drawing on his rich and extensive work in law enforcement and as the Executive Director of the Canadian based Global Resource Epicenter Against Human Trafficking (GREAT), James Brown's article points to inroads in combatting HT, labour trafficking in particular, but that Canadian law enforcement could learn from global models.

Josephine Saverese's article takes a unique focus revealing the relatively hidden state of HT in the Maritimes. Representing central Canada, Ann De Shalit and Emily van der Meulen draw upon their participation in two federal inquiries (2017 & 2018) to comment on definitional and conceptual challenges plaguing the various Canadian stakeholders faced with combatting HT and also explain how (mis)directed funding eclipses certain vital aspects and forms of HT. Finally, Montreal Crown Prosecutor Francois Boillat-Madfouny explores how Canada's TIP legislation is playing out in jurisprudence so far.

The first student article, by Samantha de Vries, draws attention to the need for international cooperation given the transnational nature of HT by presenting the case of BC's Christopher Paul Neil (aka, Swirl), who had been engaging in extensive child sex offences and disseminating videos of them online while working as an English teacher in Thailand. Next, Danika Decarlo-Slobodnik's article calls for differentiation between upper and lower sectors of sex workers and specific resources to support sex-trafficked women in Canada. The final student article, by India's Ankita Chakraborty, is not specific to Canada but offers some important lessons for Canada's effort through an insightful analysis and critique of her country's new Human Trafficking Bill.

While this Special Issue is limited by the size of the publication, we trust it will stimulate further inquiry and informed efforts to combat human trafficking in Canada. ■

1. If interested in a broader global and contextual overview, see Winterdyk, J. & Jones, J. (eds.). (2019). *Palgrave International Handbook on Human Trafficking.* London, UK: Palgrave.

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ÉDITORIAL

JOHN WINTERDYK, PhD
Rédacteur invité

Comme l'indique son titre, ce numéro porte exclusivement sur la traite de personnes au Canada[1]. Bien que la traite de personnes ne connaisse pas de frontières et qu'elle figure au deuxième rang mondial des activités criminelles les plus lucratives, il n'existe aucune publication au Canada qui est axée sur les efforts canadiens pour lutter contre la traite des personnes. Ce numéro comprend sept articles rédigés par d'éminents spécialistes de différentes régions canadiennes, un article d'un procureur aux poursuites criminelles et pénales à Montréal et trois articles d'étudiants.

Dans le premier article, Linda MacDonald et Jean Sarson abordent le sujet controversé et relativement méconnu de la torture par des acteurs non étatiques associée à la traite de personnes en présentant des arguments convaincants et des recommandations relativement à sa criminalisation. Leurs travaux obtiennent une reconnaissance croissante dans plusieurs autres pays, ce qui n'est toutefois pas le cas au Canada. L'article de Winterdyk porte principalement sur la situation relative du rendement du Canada en matière de lutte contre la traite de personnes à l'échelle nationale et internationale; il insiste également sur le fait qu'il reste encore beaucoup à accomplir malgré les progrès notables réalisés depuis 2006. Dans leur article, Jessica Jahn et Yvon Dandurand adoptent une approche légèrement plus générale; ils lancent un appel à la participation des organisations de la société civile et recommandent sept mesures essentielles relativement à leur engagement dans le processus d'examen de la CNUCTO et de ses protocoles. Ensuite, l'article de James Brown, lequel puise dans son travail considérable et d'une grande richesse en application de la loi et en tant que directeur général de l'organisme canadien Global Resource Epicenter Against Human Trafficking (GREAT), souligne les percées en matière de lutte contre la traite de travailleurs en particulier, mais indique que les autorités policières canadiennes auraient intérêt à s'inspirer des modèles internationaux.

L'article de Josephine Saverese jette un regard inédit sur le sujet en levant le voile sur la situation relativement dissimulée de la traite de personnes dans les Maritimes. Ann De Shalit et Emily van der Meulen, qui représentent le Centre du Canada, s'inspirent de leur participation à deux enquêtes fédérales (réalisées en 2017 et en 2018) pour commenter les défis conceptuels et définitionnels qui accablent les diverses parties prenantes canadiennes devant lutter contre la traite de personnes; l'article explique également la façon dont les fonds (mal) investis éclipsent certains aspects et formes fondamentaux de la traite de personnes. Finalement, le procureur aux poursuites criminelles et pénales à Montréal François Boillat-Madfouny examine la façon dont les lois canadiennes sur la traite de personnes évoluent au sein de la jurisprudence jusqu'à présent.

Le premier article d'étudiant, rédigé par Samantha de Vries, attire l'attention sur la nécessité d'établir une entraide internationale, compte tenu de la nature transnationale de la traite de personnes, en présentant le cas du Britanno-Colombien Christopher Paul Neil (aussi surnommé Swirl), qui avait commis de nombreuses infractions sexuelles contre des enfants et les avait publiées en ligne lorsqu'il enseignait l'anglais en Thaïlande. Pour sa part, Danika Decarlo-Slobodnik demande dans son article l'établissement d'une distinction entre les secteurs supérieurs et inférieurs de l'industrie du sexe, ainsi que la mise sur pied de ressources spécifiques de soutien aux femmes victimes de traites des personnes à des fins sexuelles au Canada. Le dernier article d'étudiant, rédigé par l'Indienne Ankita Chakraborty, ne porte pas sur le Canada en particulier, mais offre plutôt certaines leçons importantes relativement aux efforts du pays par l'entremise d'une analyse et d'une critique éclairées du nouveau projet de loi de l'Inde sur la traite de personnes.

Quoique ce numéro spécial soit limité en raison de la taille de la publication, nous sommes convaincus qu'il donnera lieu à d'autres enquêtes et à des efforts bien fondés pour lutter contre la traite de personnes au Canada. ■

1. Pour obtenir un aperçu mondial et contextuel plus général, voir Winterdyk, J. et Jones, J. (dir.), 2019, *Palgrave International Handbook on Human Trafficking*, Londres, R.-U., Palgrave.UK: Palgrave.

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CCJA INTERVIEW WITH JOHN WINTERDYK

NANCY WRIGHT
Justice Report Editor

ABOUT JOHN WINTERDYK, PhD: John is specialized in the areas of youth justice, human trafficking (in Canada and internationally), comparative criminal justice and crime prevention, among other research interests. John Winterdyk is a full professor in the Department of Economics, Justice, and Policy Studies and former and founding Director of the Centre for Criminology and Justice Research (CCJR) at Mount Royal University in Calgary (AB). He has held various adjunct/visiting professorships in Canada, India, and Namibia, served as a visiting professor at the Max Planck Institute in Germany, as well as carried out research into local beliefs about violence and honour in Sub-Saharan Africa and in India and led multiple criminology/criminal justice study tours to Europe and most recently to China. John has authored and co-authored dozens of articles in a wide array of distinguished journals, including CCJA's *Canadian Journal of Criminology and Criminal Justice,* has been guest editor for various publications, such as the *International Criminal Justice Review's* special issue on genocide (2009), and co-editor of the *European Journal of Criminology's* special issue on human trafficking (2011). CCJA wishes to thank John Winterdyk for his unwavering support of the *Justice Report* since 2011 when he initiated an agreement for the publication in the *Justice Report* of the winning essay of an annual undergraduate award in justice studies at MRU. John has also contributed several articles to this publication and acted as guest editor of three issues: Special Issue on Human Trafficking in Canada (34.3, this issue), Special International Issue on Terrorism (31.4; cont'd in 32.1), International Issue (29.1; cont'd in 29.2). All are currently available at www.justicereport.ca.

In addition to over 35 textbooks for the Canadian audience on young offenders, introduction to criminology, adult corrections, research methods, and his book *Pioneers in Canadian Criminology*, some of Dr. Winterdyk' recent publications include the following:

- Co-Editor (with B. Perrin and P. Reichel) of the book *Human trafficking: Exploring the international nature, concerns, and complexities* (CRC Press, 2012);
- Co-Editor (with P. Reichel) of a special issue on human trafficking for the *European Criminology Journal* (2010), which was, as of 2015 the most widely accessed issue in the history of the journal;
- Co-Editor (with Prof. Jackie Jones) of the book *Human trafficking: Opportunities and Challenges in the 21st Century*. (Lambert Academic Publishing, 2018);
- In 2019 Dr. Winterdyk finalized the first ever major reference work, *The Palgrave International Handbook of Human Trafficking* (2019), (just over 100 entries) with Co-Editor-in-Chief Prof. Jackie Jones.

Welcome and thank you, Dr. John Winterdyk, for taking time for this CCJA interview.

You hold the first PhD in Criminology awarded by a Canadian university. Please tell us about your trajectory in the field of criminal justice/ criminology and professorship at Mount Royal University in Calgary, Alberta.

Like many of my colleagues, my academic path has followed an interesting and arguably predictable trajectory. As an undergraduate psychology student (at WLU), I had the opportunity to do my practicum as a 'voluntary' probation officer. One of my supervisors, Rick Mazur (still good friends to this day), invited me to run a pilot wilderness program (Project D.A.R.E.) in Algonquin Park for some of their more challenging young offenders. Thinking it would be a wonderful opportunity to spend my summertime outdoors, I eagerly embraced the invitation. Although highly rewarding, little did I know how physically and emotionally challenging

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it would be. Nevertheless, the experience inspired me to want to work more closely with 'juvenile delinquents'. After speaking with one of my professors about this interest, he recommended I consider attending SFU, which had just started its criminology program. Thinking about the skiing opportunities (not the best criteria for planning one's academic future), I applied and moved to Vancouver. While attending the program, I was blessed to be able to take classes from some of the true pioneers of Canadian criminology – Ezzat Fattah, Paul and Pat Brantingham, Ray Corrado, Curt Griffiths, among others. As exceptional role models, I fully embraced every opportunity that was afforded me. However, upon completing my PhD (topic – eyewitness testimony), I discovered that there were virtually no criminology teaching positions anywhere in Canada - especially if you weren't proficient in French (i.e., *Université de Montréal*). At the recommendation of one of my mentors, I accepted a position at what was then Mount Royal College (MRU), thinking that in due course a position might/would open at one of the Canadian universities. Well, since joining MRU, many schools have since created their criminology/criminal justice/social justice programs; but, for a range of reasons, I've stayed put. I've made the most of the opportunity and was rewarded with being among the first there to be promoted to Full Professor.

What characterized the early days of criminology in Canada?

Being in the first SFU cohort of graduate students was fortunate, because most of our instructors had been trained or educated outside of Canada. As such, we students were exposed to a wide range of ideological ideas, and sometimes without much Canadian context given the dearth of Canadian criminology/criminal justice textbooks. However, as already mentioned, we were blessed with an exceptional cohort of professors who all seemed eager to not only have us all embrace the subject matter but to become keenly interested in what we were studying and learning. When I look back and see who is doing what from that first cohort, it is impressive. Most of my former classmates now hold positions in criminology-criminal justice programs across the country, and several have gone on to hold key positions in the justice system. Without trying to sound too nostalgic or boastful, we were blazing new trails and helping lay the foundation for what is now a widely accepted discipline across the country. While the program was very demanding – there was a high dropout rate – it taught me (and I suspect all those of us who persevered) that when you embrace a challenge with a passion, it sometimes isn't nearly as demanding as one might feel at the moment and the sense of accomplishment is that much more rewarding.

You have been running a European Criminology Study Tour in Canada since 1988, including the first Criminology/Criminal Justice Study Tour to China in 2018. Please describe some of this work.

Running the Study Tours (17 to-date) has been one of the hi-lites of my academic career. I was fortunate to have parents who enjoyed travel, especially when my father was a member of the armed forces. Until I was about 15, I had spent more time living outside of Canada than in. As they say, I caught the 'travel bug'. Experiential education, I feel, is one of the best learning experiences (e.g., practicums, immersion courses, etc.). When I joined Mount Royal, I thought a criminology/criminal justice study tour course giving regular credits might of interest to our students. Thankfully, even back then, I had a few excellent contacts in Europe to help coordinate some site visits. In the early days it took 2-3 months to fill the course but now only a couple of weeks. Some students even attended multiple times – the record being 7. When putting the tours together I try to ensure a rich cross section of criminal justice experience (i.e., visit police, courts, corrections, and depending on the trip, such organizations as the United Nations, the ICC, the former Trials for former Yugoslavia, the Human Rights museum in Winnipeg, etc.). I also make it a point to include cultural-site visits and to engage our students with their counter parts in other countries. On the recent study tour to China, several students provided an excellent overview of our criminal justice system to a cohort of Chinese public security students. Since MRU is still primarily a teaching focused undergraduate school, this is a unique opportunity for students. The tour is now the longest running Criminology/ Criminal Justice tour in Canada.

You have held various adjunct/visiting professorships in Canada, India, and Namibia and were a visiting professor at the Max Planck Institute in Germany four times. What are the benefits to your students of your work in comparative criminal justice?

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I consider myself fortunate to have been affiliated with and/or visit various schools and institutes around the world. Aside from establishing richer relationships with colleagues internationally, it has enabled me to collaborate and work with some exceptional scholars. In most cases the opportunities have further enlivened my learning experience and enriched my work and interest in a range of comparative CJ topics. On several occasions, I have been able to refer some of my students working on international or comparative issues, to further invigorate their research. Although one can readily access a considerable amount of comparative CJ information through a wide range of media and social media outlets, I am 'old school' and value face-to-face connections.

After having worked and published extensively in the area of youth justice, could you speak to the Youth Criminal Justice Act (2003)?

Let me just say that over the years, I have undertaken several comparative studies of youth justice systems around the world to understand and contextualize the relative strengths and weaknesses of our YCJA. On measure, we have a very solid youth justice model, however, like any criminal justice-youth justice system/model globally, it is subject to refinement. In an effort to be brief but hopefully not overgeneralize, I see the need for the YCJA and virtually every type of youth justice system to move more towards a restorative and community-based model that is more proactive than reactive in nature. Although one can find some good examples internationally, I have yet to come across any country that is able to fully embrace such an idea as well as provide objective evidence that it works – not even Bhutan, with its unique model of youth/criminal justice, is crime free.

You are an expert in the domain of Human Trafficking. Please tell us about your interest and involvement in the area of HT/TIP.

I am not sure I would agree with the comment that I am an expert, but I have been fortunate to have worked with many colleagues from around the world who work on one or more of the areas I am/have been interested in. I am a strong believer in collaboration—two or more minds working on a 'problem' can be far more productive than one mind alone. Several of my evolving ideas about how we might best respond or attempt to better understand some of the nuances of human trafficking have been inspired by some of the collaborative work I've done. For example, this Special Issue, has helped to reinforce the need for Canada to strengthen it collective response to human trafficking and to recognize the need to better understand the diversity and complexity of the crime. However, there are currently several excellent programs and initiatives into HT in Canada. It is also true that I've been trying to champion (and it is not a completely original idea) a new 'P' (i.e., participation), see my article in this issue, and examine the narrative discourse that characterizes the conventional discussion around human trafficking.

A recognized expert across a variety of specialities in your field - such as youth justice, human trafficking (in Canada and internationally), criminological theory (textbooks), international criminal justice, genocide, crime prevention - has your capacity for multi-specialization helped make you a leader in your field?

No, I was simply fortunate to have spent my academic career at an institution that evolved from a college to a university in 2009. There were no demands or expectations to become a specialist, or to publish in top-ranked journals, etc. The 'flexibility' of the institution allowed me to become what I refer to as a 'jack of several trades but master of none'. I am old enough and experienced enough to know that the true leaders, 'giants', in the fields in which I engage have done more important work than I, but I am honoured that a lot of my work has been well received both nationally and internationally. In this way, I feel that I am contributing to the field and perhaps inspiring others to probe some of the issues I've chosen to try and champion. My SFU mentors set a wonderful example for me and I've spent my career trying to honour the values and principles they strived (directly and indirectly) to instil in me and my classmates.

If it is true the lines between criminal and social justice are blurred, making a multidisciplinary approach necessary, what are the implications of the current academic shift toward specialization and does it call for a paradigm shift in how research into crime prevention and the administration of justice are conducted in Canada?

Again, I find this to be an interesting question because it reminds me of when I pitched the

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first edition of my Intro to Criminology textbook. Although the publisher was interested in my multidisciplinary approach, it was less well received by the external reviewers. Fortunately, much has changed since the early 1990s and criminology and criminal justice, within Canada, is increasingly being taught and researched from a multidisciplinary and integrated perspective. Also, I have seen an increasing interest in embracing an international and comparative perspective. I see this as a simple evolution of a rather young discipline. We needed to learn to crawl and walk before we could expand and capitalize on our growing skills sets. While some will likely not agree with me, based on my 30-plus years in academia, I would argue that criminology and criminal justice have undergone several paradigm shifts, not only in Canada but also globally. I think most of the pioneers included in my *Pioneers in Canadian Criminology* reflect a similar sentiment. Hence, I think it is an exciting time for young scholars and students of criminology and criminal justice in Canada as the field is very dynamic and continues to evolve. For example, despite the occasional political 'hick-up', crime prevention and restorative justice continues to play an increasingly more important role in the ideological framework of our discipline.

In closing, it's clear that the adage "those who can do and those who can't teach" does not apply to you - an eminent national and international professor, researcher, advisor, comparative/international criminologist, and prolific author. Could you give our readers some career advice?

Thank you for the accolades, but in all honesty, I do not see myself as being eminent on any level. I am simply passionate about what I do and, as quaint as it sounds, I feel blessed to be in academia and think I probably have the best possible job-career. The fact that I am well past my retirement date I think is a partial testament to what I love to do. While I was preparing my book on the pioneers in Canadian criminology-criminal justice, I found (not surprisingly) that virtually everyone profiled in the book truly enjoyed what they did academically and/or professionally. Nevertheless, I would simply encourage aspiring scholars and young academics to work or study with someone who commands your respect because of the work they are doing/have done and their willingness to support or mentor you. Although I, like most learners, was eager to learn, having a 'teacher(s)' who inspires and motivates you to do your best is one of the blessings of getting a 'good' education. Finally, once you embrace such a path, it should be rewarding for you on a number of levels; but as we all experienced during our years as a student, be prepared for feedback that should not be taken personally but inspire us to do even better. ■

RÉSUMÉ

ENTREVUE DE L'ACJP AVEC JOHN WINTERDYK, PhD

PAR NANCY WRIGHT
Éditrice *d'Actualités justice*

UN MOT SUR JOHN WINTERDYK, PhD : John Winterdyk se spécialise entre autres intérêts de recherche dans les domaines de la justice pour les jeunes, la traite de personnes (au Canada et à l'international), la justice pénale comparée et la prévention du crime. M. Winterdyk est professeur titulaire à la faculté de science économique, justice pénale et études politiques; il est également l'ancien directeur et fondateur du Centre for Criminology and Justice Research (CCJR) de la Mount Royal University de Calgary, en Alberta. Il a obtenu diverses chaires de recherche à titre de professeur associé ou invité au Canada, en Inde et en Namibie. De même, il a joué le rôle de professeur invité au Max Planck Institute en Allemagne en plus de mener des recherches sur les croyances locales qui entourent la violence et l'honneur en Afrique subsaharienne et en Inde. Il a également organisé de multiples voyages d'études sur le thème de la criminologie et de la justice pénale en Europe et, plus récemment, en Chine. M. Winterdyk a rédigé et co-rédigé des douzaines d'articles publiés dans une panoplie de revues distinguées, dont la *Revue canadienne de criminologie et de justice pénale de l'ACJP*; il a été collaborateur occasionnel pour une variété de publications, comme l'édition spéciale de la revue *International Criminal Justice Review* sur le génocide parue en 2009; enfin, il a co-rédigé l'édition spéciale de l'*European Journal of Criminology* qui portait sur la traite de personnes parue en 2011. L'ACJP souhaite remercier John Winterdyk de son infaillible soutien envers *Actualités Justice*, lequel a commencé en 2011 lorsqu'il a conclu une entente pour y publier la dissertation gagnante d'une bourse d'études de premier cycle annuelle en études de la justice dela Mount Royal University. M. Winterdyk a également rédigé plusieurs articles pour cette publication, en plus de travailler en collaboration spéciale sur les trois numéros suivants: Le numéro spécial sur la traite de personnes au Canada (34,3 [présent numéro]), le numéro spécial international sur le terrorisme (31,4 et 32,1 [suite]) et le numéro international (29,1 et 29,2 [suite]). Tous les numéros sont actuellement accessibles en ligne à l'adresse www.justicereport.ca.

En plus des quelque 35 manuels destinés au public canadien qui traitent des jeunes contrevenants, des précurseurs (de la criminologie canadienne), de l'introduction à la criminologie, des services correctionnels pour adultes et des méthodes de recherche, M. Winterdyk a participé à la réalisation de plusieurs publications récentes:

- Il a été corédacteur (en collaboration avec B. Perrin et P. Reichel) du livre intitulé *Human trafficking: Exploring the international nature, concerns, and complexities* (CRC Press, 2012).
- Il a été corédacteur (en collaboration avec Philip Reichel) du numéro spécial de l'*European Journal of Criminology* sur la traite de personnes paru en 2010, lequel a été, depuis 2015, le numéro le plus consulté dans l'histoire de cette revue.
- Il a été corédacteur (en collaboration avec la professeure Jackie Jones) du livre intitulé *Human trafficking: Opportunities and Challenges in the 21st Century* (Lambert Academic Publishing, 2018).
- En 2019, il a mis au point le tout premier outil de référence majeur (Palgrave) sur la traite de personnes, qui contient un peu plus de 100 entrées, en collaboration avec la corédactrice en chef, la professeure Jackie Jones.

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Non-State Torture Human Trafficking Family Systems: Coming Out Alive – Normalizing Women's Survival Responses

JEANNE SARSON AND LINDA MACDONALD
Persons Against Non-State Torture website: www.nonstatetorture.org email: contact@nonstatetorture.org

Co-authors Jeanne Sarson and Linda MacDonald call for criminalization of non-State torture (NST) and share testimonials of two Canadian trafficking victims. Sara was born into a non-State torture human trafficking family system and "trafficked for torturing" from age two until her late twenties when she escaped with the support of Persons Against Non-State Torture. Lynne was trafficked for torture by her husband and his friends for four and a half years. Using official listings of methods used by State torturers, the authors demonstrate that torture committed by private individuals (i.e., non-State torturers) compares to that committed by State torturers. The authors report sharing this testimonial witnessing while testifying in favour of a private members bill (C-242) to criminalize NST; the Bill failed because the existing offense of aggravated assault was deemed sufficient. Aside from giving victims the legal right to equitable access to justice in Canada and upholding the right to not be subjected to torture, the authors argue that criminalization of NST is also needed to eliminate popular, social, and political denial. Sarson and MacDonald also discuss survival mechanisms (dissociative distancing) as post-traumatic stress responses that deadened Lynne's and Sara's sensory awareness and allowed them to both come out alive.

NON-STATE TORTURE (NST)

NST involves acts committed by private individuals such as parents or spouses in the domestic private sphere. Article 1 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UN General Assembly, 1984) describes torture as the intentional, purposeful infliction of severe physical or mental pain or suffering committed for any reason including discrimination. NST forces another person to yield to the torturers' demands. Powerlessness was suggested as another defining element to be considered in situations of "private violence" when it could be shown the victimized person was coerced into staying or unable to escape (Human Rights Council, 2008, para. 28).

Torture committed by private individuals or non-State torturers compares to that committed by State torturers such as police, correctional officers, or military personnel. Figure 1 illustrates examples of acts of torture. This listing was gathered by scouring the literature describing State torturers' actions. We discovered that State and non-State torturers commit similar acts.

FIGURE 1

EXAMPLES OF ACTS OF TORTURE

- Electric shocking
- Beaten, burned, cut, whipped , kicked
- Immobilization tortures: tied, hung, caged
- Water tortures: near drowned in sink, tub
- Suffocation/strangulation/choking tortures
- Sexualized tortures: Raped with weapons, gun, knives, hand/objects, bestiality
- Forced drugging: pills, liquids, injections
- Nutritional depravation
- Psychological tortures: Humiliation, degradation, dehumanization, laughed at, animalization, terrorization, horrification
- Forced nakedness
- Sleep deprivation
- Witnessing torture of others
- Powerlessness

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HUMAN TRAFFICKING

Human trafficking involves three elements perpetrators use to prey on a potential victim's vulnerabilities. These are: (1) *actions* traffickers take to gain control of the person they traffic, (2) using whatever *means* possible including violence, with (3) exploitation being their *purpose*. Women and girls predominately suffer sexualized exploitation (UNDOC, 2013). Applied to Sara and later Lynne, actions involved them being harboured in private residences and trafficked in and or out of such residences. *Means* included Sara's parents and Lynne's husband abusing their positional powers within intimate relationships and inflicting torture to exploit them to like-minded perpetrators (Sarson & MacDonald, 2018).

SITUATIONAL AWARENESS AND KNOWLEDGE DEVELOPMENT

Sara and Lynne provide in-depth insights into their NST trafficking ordeals. Sara, a Canadian woman in her 50s with a master's degree described being trafficked beginning at age two. She was unable to begin escaping until her late twenties when we agreed to support her. Lynne, Canadian, married in her mid-20s, detailed in 2000, how her husband and his three friends held her captive, tortured and trafficked her for four and one-half years before she escaped (Sarson & MacDonald, 2009).

Sara: Captive on the boat

At 14 made to go with 'G', my dad's friend. He didn't take you away; he kept you, he tortured you ... He terrorized you in the car. He hits you on the side of the head ... He would get mad if you cried, then he would choke you until you would almost pass out ... and say he would kill you. He would laugh a scary laugh, looks scary in his eyes ... On the boat, he would get the shock things out [electric shocking], throw you down, and hit you, make all kinds of bruises with tools like whips, chains, knives and guns. He blindfolds you, so you don't know what he's doing. He sticks a broken bottle in your ribs and sucks the blood. He says 'smile'. He had a big black dog [bestiality]. He gets food and does not give it to you, no water either. He puts you in a cage, throws you overboard and drags the cage in the water with the boat. He drowns you. He pulls you up, throws you on the deck, rapes you, and you were supposed to say you wanted more.

Lynne: Gang knife torture-raped

Three or four men became uncontrollable in their desires to see terror explode into my eyes. Uncontrollable with the knife in my vagina ... raping my dead-like body ... Losing so much blood made it difficult to stay conscious as they dragged me down a dark alley to the pig doctor's dirty office. At least that's what I called him—the 'pig doctor'. Overwhelming odours of that place still haunt me as do the images of old and newer blood splattered on the table and the floor. A small dirty sink stood to the right of the filthy table on which they threw me. I have images of the pig doctor standing in the dirty office wearing large grey dirty gloves, and a lab coat spotted with dark and bright bloody stains. I can still see a tray of knives, a red tube, and a bloody speculum. I heard him whisper, 'Give her four cc's'. Something was injected into my right upper arm. Whatever it was made me feel out-of-it, but I could still hear the goon say, 'Can't lose her like the last time'.

Sara and Lynne's ordeals describe NST situational powerlessness. Examples of NST acts as listed in Figure 1 include electric shocking, torture-rapes, water torture, physical and near-death tortures, and psychological tortures—terrorization, horrification, dehumanization, and humiliation that maximized the perpetrators' pleasures.

SURVIVAL RESPONSES

That Sara and Lynne survived is astonishing. Developing in-depth NST situational awareness and informed understanding of their survival requires considering this question: What might a woman's or a girl's—Sara's and Lynne's—normal survival responses be? Lynne and Sara understood their dissociative distancing responses. Lynne said:

Being out-of-my-body, being up on the ceiling and looking down ... I remember how sorry I felt for-that-person-down-there on the bed—but that person was me! My first out-of-my-body experience just happened, so too did the imagery of finding my-Self in a field of very tall wildflowers, flowers so tall that when I laid down in them, I became invisible. Tall mountains and a row of trees were the backdrops for this field—a field without bees, just ... beautiful butterflies ... flying free. This image repeatedly came, whenever I'd be lying on the bed, lying on my

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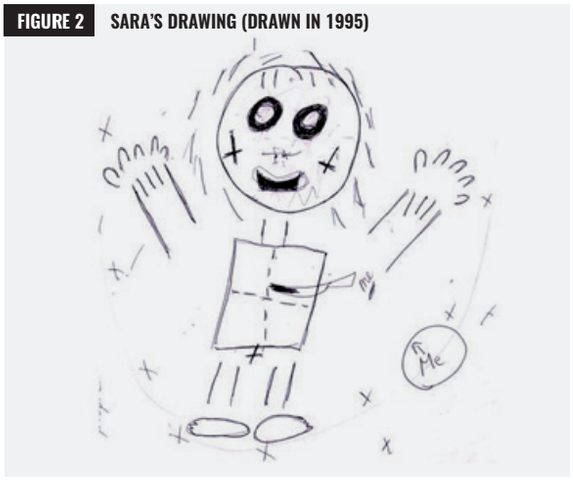
> right side facing the bare wall with my back to the door ... This sense of the beauty came when I was alone and cold—blue cold.

Sara's survival dissociative distancing responses become visible by examining her use of third-person pronouns in her above disclosure. Not using the pronouns "I", "me", or "my" distanced the victimizations away from her-Self. Drawing her physicality concept illustrated Sara's dissociative distancing response. Shown in Figure 2, Sara separated one part of her body from another part. For example, her hands were not connected to her arms. Early in her recovery, Sara referred to her hands as "the hands". This objectification effectively and affectively distanced her terror and revulsion. It helped her reject her forced participation in the sexualized acts perpetrators demanded of her. Dissociative distancing worked because it was "the hand" doing the acts.

FIGURE 2 **SARA'S DRAWING (DRAWN IN 1995)**



Dissociative distancing survival responses deadened Lynne's and Sara's sensory awareness. They described they could not feel the severe pain inflicted against their body and mind when tortured. Their dissociative distancing survival responses are normal; they must not be pathologized as being disordered. Instead, they must be treated with dignity as women who survived a human right violation such as the human right not to be subjected to torture as defined in article 5 of the *Universal Declaration of Human Rights* of 1948. Therefore, we reject a pathologizing label such as post-traumatic stress disorder (PTSD); we acknowledge their survival responses as *post-traumatic stress responses* (PTSR).

COMING OUT ALIVE

Getting out alive or escaping is one complicated, life-threatening ordeal. However, *coming out alive* is painfully problematic. Healing the fragmentation of their personality means shifting their perceptions of being an "it" or "only a head" to developing a relationship with Self as a human person. This requires answering the question: Who am I?

For survival, the body's neurobiological responses spontaneously deaden the severe sensory torture pain suffered. However, as the dissociative distancing shrinks the severe pain begins to return during integrative healing. Describing her shock, Sara said:

> The reality is so unimaginable but so personal. Just when I think the worse is over [and] my heart broken ... collapsing I cannot do this anymore ... agony ... extreme rage ... it is the knowledge, the images, the feelings ... the pain ... it gets worse ... [however] reliving was not as bad as remembering (written 2002).

As opposed to Lynne, Sara's NST human trafficking victimizations began in infancy thus survival meant she normalized these as family relationship behaviours. Addressing Sara's reality is beyond the scope of this paper. However, our experiences of helping Sara, Lynne, and other women heal, show that over time they integrated a comprehensive understanding of the intentional inhumanities inflicted against them. As their dissociative distancing survival responses became less and less distanced, the smells, sounds, voices, physical torture pain, sights, emotional feelings, and knowledge of whom some of the torturers-traffickers were surfaced. They became a witness to their own NST human trafficking victimizations. In so doing, vicarious trauma and emotional grief can occur. Sara's description was:

> I can't believe what I am seeing ... understanding. I shut out reality. I did not see things for what they were. Was I in zombiehood? I had so much loss it makes me sad and angry, sometimes overwhelmed. It hurts as the reality comes more transparent and more apparent. What I don't understand about the process is that I think I have the reality, but then another layer of clarity comes (2002).

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Integrating the reality of who the perpetrators were and understanding their destructive, dehumanizing *modus operandi* and its impacts is essential. Based on our experiences this facilitates their ability to prevent on-going re-victimizations. Lynne described the positive outcomes of this difficult healing work:

> I'd never thought about having human rights and responsibilities, about respecting and valuing my own needs. As I say good-bye, I have a desire to talk and talk, to tell and tell. I think I've unleashed My Voice. Having a voice is a bizarre sensation … [W]hen I speak my voice echoes and reverberates in my head. It sounds as if I'm screaming although I know I'm not. I know others can never intimately understand the horror of my ordeals, nor emotionally understand how much has been stolen from me, but after all my years of silence I needed to risk letting a few friends read or know about my story … I was unprepared for their compassionate belief. [My ex- husband … had drilled it into my head, 'No one will ever believe you'. … I'd never had a reason to disbelieve him, until now. Can you imagine my feelings? I'm being believed!

INTERVENTIONS

Eliminating social denial. When NST human trafficking family-based systems such as explained by Lynne and Sara are denied, rejected, or disbelieved real social pain similar to physical pain occurs. Emotional hurt, anger, and grief impact negatively on Sara's and Lynne's abilities, on victimized women's abilities, to heal and relationally trust anyone or institutional structures.

Challenging institutional betrayal and political cruelty. Healing, therefore, requires women to be believed, heard, and with the legal and social acknowledgement of the crime of NST specifically suffered. In Canada, however, institutional betrayal (Smith & Freyd, 2014) and political cruelty violates women's trust in systemic legal justice because only State torture is presently criminalized. For example, Private Member's Bill C-242, An Act to amend the Criminal Code (inflicting torture), sought to criminalize non-State torture. After study by the House of Commons Standing Committee on Justice and Human Rights, Anthony Housefather reported to the House of Commons Committee Chair that the Bill's demand was "redundant" because charging non-State torturers with aggravated assault is enough (2016).

Testifying before the Committee, we shared aspects of Lynne's and Sara's ordeals; however, political and institutional rejection of naming and criminalizing NST followed. Placing the Committee's decision into an imaginary role-play of Lynne speaking directly with Mr. Housefather, the conversation we imagine would sound something like this:

> Mr. Housefather to Lynne: Amending the Criminal Code is redundant.
> Lynne to Mr. Housefather: Not being heard, to know my suffering is not being acknowledged as torture makes me feel invisible—it makes me feel non-human.
> Mr. Housefather: The Committee's decision is you suffered aggravated assault.

This is tantamount to telling Lynne that a request to seek justice, to name and denounce the perpetrators for the NST suffered was superfluous, unnecessary, excessive, and unessential. These are words various dictionaries use to define "redundant". To have the Committee knowingly disregard the brutality, dehumanization, and degradation that Lynne's and Sara's stories revealed, in our opinion, is an institutional betrayal of trust in governmental processes. Rejecting criminalizing non-State torturers' *modus operandi* feels like political cruelty to us.

Equitable access to justice. The legal system must understand women's survival responses and know non-State torturers' *modus operandi* as described in this article. Equitable access to justice demands the legal right to appear in a court of law to denounce the NST crime suffered. NST is a specific crime (Jones, Sarson, & MacDonald, 2018). The lack of a specific NST law produces legal inequality for persons so non-State tortured, and no social prevention education and protection occurs. Governmental and societal discrimination and exclusion must come to an end by naming and criminalizing non-State torture as a specific crime. ■

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RÉSUMÉ

Non-State Torture Human Trafficking Family Systems: Coming Out Alive – Normalizing Women's Survival Responses

JEANNE SARSON AND LINDA MACDONALD
Persons Against Non-State Torture
Site web: www.nonstatetorture.org
Courriel: contact@nonstatetorture.org

Les coauteures Jeanne Sarson et Linda MacDonald demandent la criminalisation de la torture non étatiques et partagent les témoignages de deux victimes canadiennes de la traite de personnes. Sara est née dans un système familial de traite de personnes à des fins de torture commise par des acteurs non étatiques. Elle a été victime de traite à des fins de torture depuis l'âge de deux ans jusqu'à la fin de la vingtaine, moment où elle s'est enfuie à l'aide du soutien de l'organisme activiste *Persons Against Non-State Torture*. Pendant quatre ans et demi, Lynne a été victime de traite à des fins de torture, orchestrée par son mari et les amis de ce dernier. En s'appuyant sur des listes officielles de méthodes de torture utilisées par des acteurs étatiques, les auteures démontrent que la torture perpétrée par des particuliers (c.-à-d. les acteurs non étatiques) est comparable à celle perpétrée par des acteurs étatiques. Les auteures déclarent avoir partagé ces témoignages rédigés par des victimes lorsqu'elles ont témoigné en faveur du projet de loi émanant d'un député (C-242) pour la criminalisation de la torture non étatique; le projet de loi a échoué, car on estimait suffisante l'infraction déjà établie de voies de fait graves. Les auteures soutiennent que la criminalisation de la torture non étatique est nécessaire, non seulement pour donner aux victimes le droit en vertu de la loi d'avoir un accès équitable à la justice au Canada et faire respecter le droit de ne pas être soumis à la torture, mais aussi pour éliminer le déni sur les plans populaire, social et politique. Mmes Sarson et MacDonald exposent également des mécanismes de survie (distanciation dissociative) comme réactions à un stress post-traumatique, qui ont engourdi la sensibilité sensorielle de Lynne et Sara et leur ont permis de s'en sortir vivantes.

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Combatting Human Trafficking in Canada: How Do We Measure up?

JOHN WINTERDYK
Full Professor, Department of Economics, Justice, and Policy Studies, Mount Royal University, Calgary, AB.
Email: jwinterdyk@mtroyal.ca

John Winterdyk presents a historical overview of human trafficking and examines the relative success of Canada's efforts to combat TIP (aka HT) since the ratification of the Palermo Protocol. Situating his assessment within the context of the four pillars of priority enshrined in the Palermo Protocol: Prosecution, Protection, Prevention, and Partnership, Winterdyk calls for a 'pardadigm shift' in Canada's response to TIP by way of a fifth P (Participation).

Albert Einstein is quoted as having once said: "The more I learn, the more I realize how much I don't know". Trafficking in persons (TIP) dates to ancient times and, since the abolishment of slavery circa the mid-late 1800s,[1] we have seen numerous efforts to eradicate human trafficking. Since the United Nations' *Convention against Transnational Organized Crime* (commonly referred to as the Palermo Convention), which was implemented in 2000 but did not come into force until December 25, 2003, we began to bear witness to numerous national and international efforts to eradicate the problem. As recently as 2018, it was estimated that between 20 to 30 million people globally are victims of some form of human trafficking, with the most common forms of TIP (aka Human Trafficking, HT) being sexual exploitation and forced labour. However, as reported by a U.S.-based organization, Polaris, there are over 25 different types of trafficking – and the list is growing (see https://polarisproject.org/typology). Depending on the source one uses, TIP is the second, if not the first, most profitable crime worldwide; the International Labor Organization estimates that human trafficking generates approximately $200 billion in illegal profits each year.

Since the ratification of the Palermo Protocol ("Protocol"), a flurry of research has arisen around trying to understand and determine how best to address this colossal human rights violation. As Gallagher (2012) described the process, we have created an "anti-trafficking industry". Despite the expanse of related knowledge and its collective impact, despite all that we know about TIP, we do not appear to be any closer to eradicating it.

This article examines the relative success of Canada's efforts to combat TIP, situating the assessment within the context of the four pillars of priority enshrined in the Palermo Protocol. These pillars are referred to as the '4 Ps': Prosecution, Protection, Prevention, and Partnership. The article will begin with an overview of the evolution of Canada's efforts to combat TIP and conclude with a couple of recommendations calling for a 'paradigm shift'.

AN HISTORICAL OVERVIEW OF TIP IN CANADA

Trafficking in Canada dates to the early 1600s when the transportation of slaves was introduced by French colonists. Until the practice was abolished in 1834, trafficking of persons was a legal and profitable way of supporting the growing economic demands of the emerging country. The slave trade was openly practiced as chattel slaves were legally bought, sold, and traded within what was then Upper and Lower Canada. The first slaves in New France were from the Pawnee Nation who lived in what is now central United States, but New France also bought and sold Black slaves. At the peak of

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the slave trade in 1793, there were an estimated 4,200 enslaved persons; of those, some 2,700 (64%) were Indigenous and the others mostly Blacks (Henry, 2018). During this period most slaves were used for forced labour to support the economic growth of the country.

As the momentum towards abolition evolved, many slave owners adopted the practice of indentureship. Under this system, slave owners would pay their formerly enslaved workers to continue working, but at wages far below what the fair market would have demanded. This practice continued until the passing of the *Slavery Abolition Act* of 1834. Though, disputably, not as prevalent in Canada, the practice is still very much alive in other parts of the world (see Choi-Fitzpatrick 2017).

As was the case in many other countries, the issue of slavery essentially faded from the limelight in Canada after its abolition. However, the recruitment, transportation, and exploitation of mostly women and children for sexual exploitation continues as a clandestine activity today as seen in the current state of prostitution in Canada. Although not all prostitutes are victims of trafficking, various sources suggest that in most cases (approx. 60+%) they are trafficked and forced into prostitution, with one Canadian scholar describing forced prostitution as a "modern-day slave auction" (Brock 2017).

Finally, when the United Nations ratified the Palermo Protocol, the international community, including Canada, suddenly appeared to reawaken to the fact that 'modern day slavery' had morphed into an economically driven underworld enterprise. Gradually, various scholars and vested organizations began to focus on TIP and demonstrate that domestic and international human trafficking is very much alive in Canada.

HOW IS CANADA DOING IN ITS EFFORT TO COMBAT TIP?

In 2006, the then-Calgary-based non-profit organization 'The Future Group' prepared a report in which they evaluated the success of eight different countries and their responses to combatting human trafficking. The United States received the highest score (B+) while Canada scored the lowest of the eight countries – the only country to receive an 'F' (Falling short of the mark… 2006). Although much has changed since 2006, I am reminded of a famous quote often credited to the French novelist and journalist Jean-Baptiste Alphonse Karr (1808-1890): "the more things change, the more they stay the same". While the statement may be pessimistic, the state of TIP in Canada remains dreary even after the ratification of the Protocol.

Investigation and Prosecution: Between 2009 and 2016, Statistics Canada reports that the number of police-reported incidents of human trafficking increased from 50 in 2009 to 340 cases in 2016 for a total of 1,220 reported cases (Ibrahim, 2018).[2] Of those cases, almost 60% resulted in stays or withdraws, and only around 27% resulted in a guilty finding. When compared to over 50% of all violent crimes resulting in a guilty verdict, these results raise serious questions about the effectiveness of the justice system as well as about the challenges and limitations of the current legislation (see Kaye & Hastie 2015). While police investigation may be improving, the ability of the system to prosecute cases as human trafficking remains abysmal. This is disconcerting when official statistics show that most of the victims are women and girls under the age of 25. The trend reaffirms the concerns of Alberta Conservative MP Arnold Viersen, co-chair of the All-Party Parliamentary Group to End Human Trafficking, that the global trend of TIP in getting worse (25% of human trafficking… 2018). Therefore, while it is appropriate to hold the perpetrators of TIP accountable, our current criminal justice system is not getting the job done (see, e.g., Oxman-Martinez, Hanley & Gomez, 2005). Furthermore, although there is no available data, based on the general understanding of legal costs and if we were to apply a grading system to gauge how effectively and efficiently we are prosecuting trafficking perpetrators, the cost-effectiveness of the judicial system would definitely receive a failing grade.

Protection: Despite some of the ongoing criticisms surrounding the fairness with which Canadian public institutions such as commissions and tribunals conduct their proceedings, Canadians like to see themselves as champions of protecting the fundamental human rights of others (see Eliadis, 2014). As a signatory member of the UN Trafficking Protocol, Canada is expected to uphold Articles 6 to

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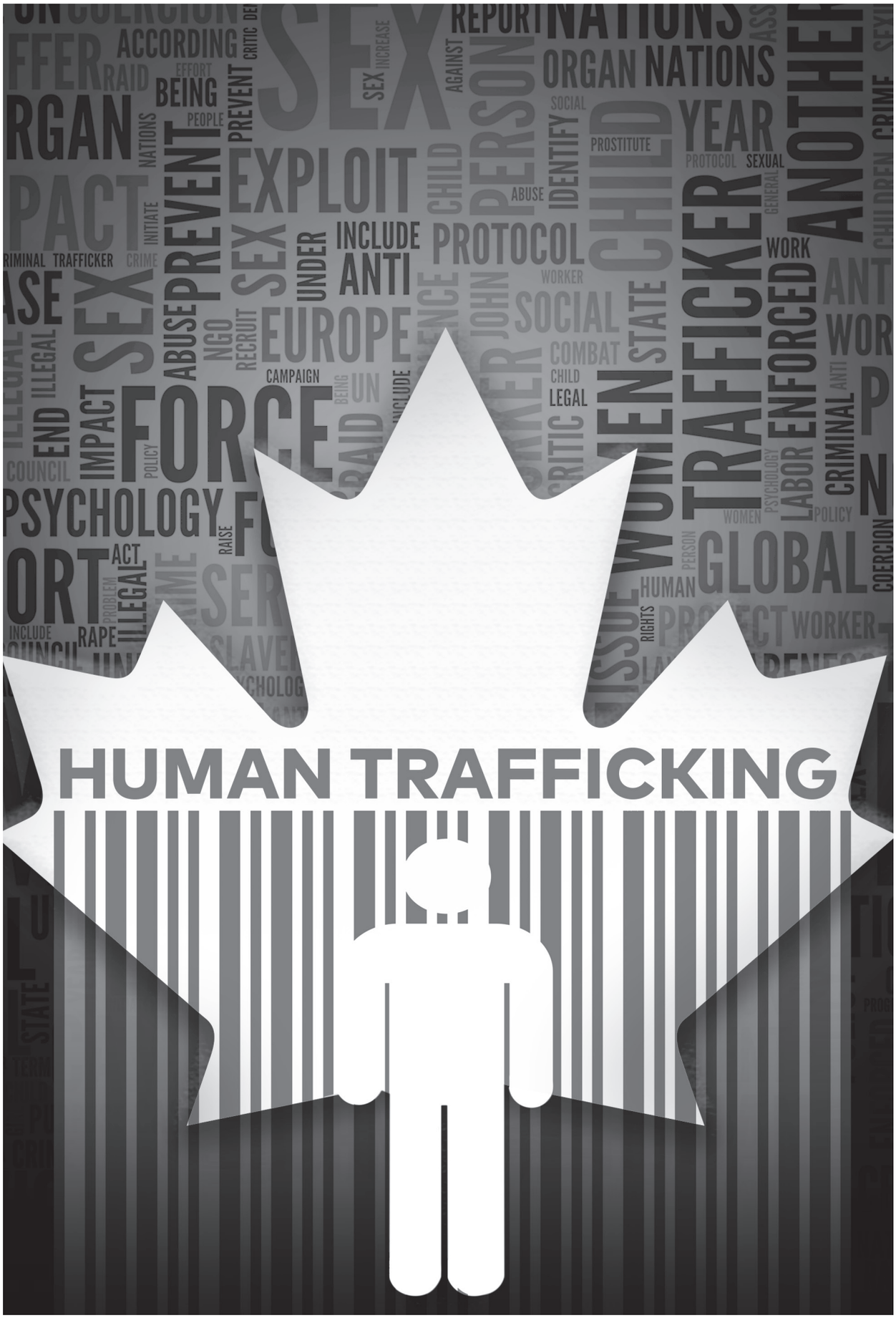

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8, all of which deal with the protection of victims. In 2006, the U.S. organization Future Group reported that "trafficking victims are not provided with any government funded medical, psychological or counselling support in Canada" (p. 14), and further observed that any possible support was only available through private NGOs. For example, ACT (Action Coalition against Human Trafficking) Alberta is a provincial NGO organization that offers support in non-emergency situations to victims, otherwise referring victims of trafficking to 911 or Crime Stoppers for support. Similarly, in BC, there is no proactive attempt to find victims of trafficking. As Brock (2017) notes, victims are typically only found if they escape or manage to report their situations to authorities.

Currently, there are about 24 Canadian organizations and agencies addressing human trafficking, of which about half are NGOs; these organizations offer a range of resources and services to victims. However, there is no national coordination centre, although some of the provincial NGOs do engage (to varying extents) in inter-agency collaboration, sometimes including federal agencies such as the RCMP, the Canada Border Services Agency, Immigration and Citizenship Canada, and the Canadian Council for Refugees. Since 2006, there have been some notable initiatives in combatting TIP in Canada. In 2012, through its Victim Fund, the federal government allocated $4M over eight years to support NGOs in their efforts to support victims of trafficking. Then in 2016, the government allocated $16.7 million in funding over four years for the creation of Family Information Liaison Units across the country. Some of the funds are intended to support victims from marginalized areas as well as Indigenous women and girls. More recently, in 2016, a consortium of Ontario partners pooled $72M to invest over four years to support the creation of a Provincial Anti-Human Trafficking Coordination Office,[3] and in 2017 the Ontario government, through its Anti-Human Trafficking Community Supports and Indigenous-led Initiatives Funds, allocated $7 million to help human trafficking survivors find housing in Ontario (How $7M will help… 2017).

Despite these commendable efforts, the various national efforts still do not provide for precise protective measures that address the unique needs of trafficking victims. For example, Indigenous women and girls remain one of the most targeted and over-represented groups trafficked despite the various initiatives designed to protect this vulnerable group. Furthermore, as noted in the 2018 TIP Report, Canada has failed to provide any comprehensive data on the type of services victims are provided/available nationwide or – with the rare regional exception – any information on the type and nature of emergency housing allocated specifically for trafficking victims. Furthermore, to-date, there are still no mechanisms in place to protect victims of trafficking during investigations.

Partnership: To Canada's credit, in recent years, various initiatives across the country have demonstrated an attempt at both the national and regional levels to promote partnerships. For example, in 2012, the government launched the National Action Plan to Combat Human Trafficking (the "Action Plan") to help bridge the gaps in the current response mechanisms as well as improve awareness of the plight of TIP in Canada (and internationally). We still do not have any reliable statistics on victims of trafficking, be it for sexual exploitation or forced labour, or any of the emerging forms of trafficking (e.g., organ, domestic servitude, forced/arranged marriage, etc.) (Millar & O'Doherty, 2015).

In 2016, as mentioned above, Ontario launched a collaborative initiative to combat TIP. Furthermore, in the same year, the Ontario government launched an awareness campaign on the domestic sex-trafficking of Indigenous people, while the Minister of Status of Women launched several campaigns to address issues such as gender-based violence. These and several other schemes, however, work mainly in isolation. This appears to be reflected in the 2018 TIP Report around the theme of partnership: "the range, quality, and timely delivery of trafficking-specific services varied nationwide" (p. 130).

CONCLUSION: RECOMMENDING A PARADIGM SHIFT TO FIVE PS

With time and given the gravity of TIP, one should expect that every country does what it can to help eradicate the blight of human trafficking. While much has improved since Canada first signed the Protocol in 2002; on a measure, there is room for (considerable) improvement. While the problem of TIP is growing in Canada, public awareness is still limited and prosecution under TIP legislation is still faltering. In 2018, for example, Canada

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reported fewer convictions for the third consecutive year and failed to provide comprehensive data on investigations. Partnerships continue to lack political cooperation and coordination, and although Canada received a Tier 1 rating in 2018 in the annual TIP report – the highest possible rank, implying compliance with the Protocol – we cannot be lulled into the misconception that we are eradicating the problem. Just as Alberta claims to be a rat-free province, Canada should strive to be a TIP-free country. To do so will likely require a change in thinking, which – in keeping with the UN's '4 Ps' – will require the addition of a 5th P: Participation. So, even though a couple of coordinated provincial approaches have embraced a harmonized approach to ensure that the most promising practices are used, these efforts still operate as silos as opposed to functioning in a transnational–partnership capacity.

Thus, it is time to revise/update the national action plan to ensure that Canada meets, if not exceeds, the 4 (or 5) Ps. Although perhaps a tall order, as a bastion of human rights we have a moral and ethical obligation to commit to such an agenda. ■

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NOTES

1. Denmark banned slavery in 1792 while Canada did so on August 1, 1834, with the Slavery Abolition Act. The last country to abolish slavery was Mauritania, in 1981; however, they did not make trafficking a crime until 2007.
2. The report represented the first federal effort to document reported cases of TIP, and it includes some of the data collection initiatives introduced in some European countries and the United States.
3. The 2018 Trafficking in PersonsReport even gives special attention to this initiative and states that "Ontario has undertaken an impressive number of actions under each pillar" (p. 18).

RÉSUMÉ

Combatting Human Trafficking in Canada: How Do We Measure Up?

JOHN WINTERDYK
Full Professor, Department of Economics, Justice, and Policy Studies, Mount Royal University, Calgary, AB.
Courriel : jwinterdyk@mtroyal.ca

John Winterdyk présente un survol historique de la traite de personnes et examine le succès relatif des efforts que déploie le Canada pour lutter contre ce crime depuis la ratification de la Convention de Palerme. En situant son évaluation dans le contexte des quatre principes prioritaires inscrits dans la Convention de Palerme (Poursuites judiciaires, Protection des témoins, Prévention et Partenariat), John Winterdyk demande l'ajout d'un cinquième principe (Participation) pour entraîner un «changement de paradigme» dans la réponse du Canada face à la traite de personnes.

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Any Progress Yet? The Role of Civil Society in Monitoring Anti-Human Trafficking Efforts

JESSICA JAHN AND YVON DANDURAND
International Centre for Criminal Law Reform and Criminal Justice Policy, Vancouver (BC)
Jessica.Jahn@telus.net Yvon.Dandurand@ufv.ca

A window of opportunity to improve the implementation of the United Nations Convention against Transnational Organized Crime's Trafficking in Persons Protocol has been opened by the recent establishment of a review mechanism, which aims to help states gain credible insight into their respective implementations of the Protocol and the Convention and bring a higher level of accountability into the global and national anti-human trafficking effort. The authors identify the participation of civil society organizations, such as non-governmental organizations, academia, community groups, and others as key. They suggest that Canada can help show the way forward by doing far more to engage civil society in the review process than is required.

It would be difficult to argue that our current approach to the prevention and elimination of human trafficking has achieved significant results. On the contrary, all evidence points to the opposite conclusion, including the ever-growing prevalence of the problem of human trafficking and lack of effective prosecution of this crime (see Winterdyk's article in this issue), as well as the galloping growth of the migrant smuggling industry (Dandurand & Jahn 2019). In addition to the limited number of prosecutions, challenges to effective national and international cooperation, continuing criminalization of victims and limited evidence-based knowledge signals erroneous effects and little space for alternative approaches (see, generally, Dandurand & Jahn 2019).

It will soon be 20 years (i.e., 2020) since the adoption of the *United Nations Convention against Transnational Organized Crime* (the Convention) and its related protocols on human trafficking and migrant smuggling. The number of victims of human trafficking increases every year (United Nations Office on Drugs and Crime, 2018). There is no sign that the current approach has been effective in curbing the problems of human trafficking and migrant smuggling. We deem it essential to enhance the role of civil society organizations in reporting on the nature and scope of the problem of human trafficking and the effectiveness of government responses. We suggest that the recent adoption of a review mechanism for the Convention and its protocols offers a unique opportunity to do so. We place particular emphasis on the indispensable role of civil society in reporting on the nature and scope of the problem. The article concludes with a list of practical ways in which civil society organizations – non-governmental organizations, community groups academia, and others – can engage with the review mechanism process.

MEASURING THE PROGRESS OF THE UN TRAFFICKING IN PERSONS PROTOCOL

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Trafficking in Persons Protocol) has advanced the global movement against human trafficking by encouraging states to adopt new

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anti-human trafficking legislation, establish prevention measures, and raise public awareness of the problem (Gallagher 2015). However, in Canada and elsewhere, the awareness of the increasingly pervasive threat of human trafficking has not yet translated fully into a pragmatic response.

Despite promises of laws designed to promote the detection, investigation, and prosecution of human trafficking crimes, prosecutions remain relatively rare (Dandurand, 2017; Farrell & Kane, 2019). Human trafficking, globally, remains under policed and under prosecuted. Many countries lack either the will or the necessary capacity to take effective action (Blanton et al. 2018). Few countries have managed to bridge the chasm between the adoption of new laws and policies to counter human trafficking and their implementation. Furthermore, many of the national legal frameworks are fraught with convoluted evidentiary requirements rendering them essentially unenforceable (Dandurand & Jahn, 2019). International cooperation in the detection, investigation and prosecution of human trafficking, which the Convention and its protocols were designed to promote, remains as problematic as ever (Boister, 2016). As a result, there have been relatively few successful prosecutions in Canada and globally.

IS THE UN TRAFFICKING IN PERSONS PROTOCOL GENERATING ANY POSITIVE RESULTS?

There is a growing sense that the Trafficking in Persons Protocol is not generating any positive results. The truth is that we still have not found a way to measure the impact of the Protocol or adequately estimate the prevalence of human trafficking (Bales, 2018; Saner et al., 2018). In Canada, for instance, the best we have so far is a report by Statistics Canada on police-reported cases of human trafficking (Ibrahim, 2018), which tells us next to nothing about the prevalence of the problem and little more on how our response to it is faring. Without any reliable data, how can we possibly know whether we are making any progress in the fight against human trafficking?

Of course, that is precisely our point: we cannot know because we have not given ourselves the means to find out. It is high time that we start doing so. We certainly should ask whether countries have delivered on their commitment to implement the Trafficking in Persons Protocol. If not, what went wrong? We should also ask what the impact of the Protocol has been, bearing in mind that the impact is largely tied to that of the Smuggling of Migrants Protocol and of its parent Convention.

Answers to these and related questions have continued to elude us. At the national level, few countries have conducted a comprehensive evaluation of the impact of their national strategy against human trafficking. Canada has the findings of the evaluation of its national action plan, although it focused more on process than outcomes (Public Safety Canada, 2018). Is there a way to get some credible answers and bring about a higher level of accountability vis-à-vis global and national anti-human trafficking efforts? Could an enhanced monitoring role by civil society organizations be part of the solution (Mattar, 2008)?

THE REVIEW MECHANISM FOR THE CONVENTION AND ITS TRAFFICKING IN PERSONS PROTOCOL

At the first Conference of the Parties to the Convention (COP, 2004), proposals for a review mechanism were presented and draft reporting questionnaires were circulated. Unfortunately, a consensus could not be reached because the countries involved were unable to agree on (1) how to fund the mechanism; (2) how to define the scope of the review mechanism so as to minimize the burden of time and work it would impose; (3) the potential duplication between this and other reporting mechanisms, particularly the reporting mechanism for the United Nations Convention against Corruption; and(4) the scope of involvement of civil society organizations. Inertia stalled country discussions respecting international oversight of their law enforcement and justice systems, which they regard as central to national sovereignty (Shaw & Stanyard, 2018).

After years of vacillation and protracted negotiations, at its ninth session the COP adopted a resolution establishing a formal mechanism for the review of the implementation of the Convention and its protocols to which it is guardian. In so doing, the COP adopted the procedures and rules for the functioning of a review mechanism and requested the convening of an open-ended intergovernmental expert group to finalize and harmonize associated self-assessment questionnaires and prepare guidelines for conducting the country reviews. The eventual

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establishment of the review mechanism reflects the fact that member countries are finally prepared to bear responsibility for their (non-) compliance. The new mechanism is the result of a compromise; and, as such, it is indeed not perfect. Considering the sensitive political nature of the review process, this is a hard-won achievement (Shaw et al., 2018), but it also means the work has only just begun. One can only hope that, with time, the review mechanism will be perfected and become more robust.

In brief, the review mechanism can be described as a primarily legalistic intergovernmental process that entails a general review undertaken by the plenary of the COP to allow for the exchange of experiences and challenges in implementing the Convention and the country reviews (Shaw & Stanyard, 2018). The country reviews, on which the review process relies, involve a self-assessment stage followed by a desk-based peer review by the parties of two other States. The outcome reports of each country's review will be submitted to the COP's thematic working groups, which cover trafficking in persons, smuggling of migrants, firearms, international cooperation, and technical assistance. So-called 'constructive dialogues' will be convened for the participation of civil society actors, although these will only be held after the working group sessions and after their reports have already been adopted.

ENHANCING THE ROLE OF NGOS, COMMUNITY GROUPS, ACADEMIA AND OTHERS IN THE REVIEW PROCESS

It is crucial to draw the voices of civil society organizations not only into the review process but into the international debate about how to improve our collective response to human trafficking (Rose, 2017). However, resistance to civil society's involvement in the review process persists. According to Mark Shaw and Julia Stanyard (2018), this resistance comes…

> …from concerns that allowing space for non-state parties to voice themselves may lead to robustly critical appraisals of certain states' records in fighting, or even being involved in, organized crime. It is the kind of criticism that many states are unwilling to be subjected to, especially if it is amplified through the mouthpiece of the UN.

As a compromise, the new review mechanism affords some limited participation by non-state actors. There are three main avenues for this limited civil society participation in the review process: (1) countries are 'encouraged' to consult, at the self-assessment stage, with all relevant stakeholders, including NGOs and academia, private-sector representatives, and community groups; (2) civil-society organizations will have an opportunity to take part in a 'constructive dialogue' convened at the level of the thematic working groups; and (3) civil society groups will be able to participate in and make oral statements during what is called the 'general review phase' of the mechanism and which convenes at the COP (Shaw et al., 2018).

Despite the recent decisions, many obstacles to the full engagement of civil society organizations in reviews of international anti-human trafficking treaties exist. Political resistance to greater civil society involvement will likely continue, but Canada and like-minded countries can show the way forward. By going much further than is required by the Convention to promote civil society's engagement in their review, they can demonstrate the high value of civil society's contribution.

AVENUES FOR CIVIL SOCIETY INVOLVEMENT IN THE REVIEW MECHANISM PROCESS

The following are a few examples of how civil society groups can engage in the review process of the Convention and its protocols.

- Monitor the progress of national action plans and strategies to combat human trafficking and insist they be evaluated rigorously.
- Gather information that would usually be collected during visits to each country, such as by hosting multi-stakeholder meetings to solicit input, especially concerning non-legalistic matters affecting compliance and implementation.
- Request meetings with government officials and politicians during the self-assessment phase, with a view to ensuring the content captured in the assessment report is well informed and accessible.
- Call upon governments, through meetings, letters, social media posts, or otherwise, to prepare action plans that respond to the recommendations set out in the country reviews.
- Facilitate advocacy campaigns involving the media and other relevant stakeholders and ensure transparency and popular involvement by informing the public about the review process and its outcome(s).

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- Prepare background papers to submit for discussion during the constructive dialogue, including information not captured in the self-assessments and the type of assistance such organizations can offer in the implementation phase, and deliver oral statements during the general review held at the COP.
- Cooperate at the regional or global levels with other civil society organizations involved in the review process, such as by developing civil society coalitions nationally or internationally or by participating in the work of existing coalitions, including the Global Initiative against Transnational Organized Crime.

CONCLUSION

Given the renewed commitment by countries to prevent and combat organized crime and human trafficking, as reflected in the recent agreement for a review mechanism, a window of opportunity for change has been opened. Civil society participation in the review process is particularly crucial because country visits will not be held and the 'constructive dialogues' will only be convened after the adoption of the outcomes of country review reports (Shaw et al. 2018). By working together and engaging diverse voices, civil society organizations can help to ensure that the new review mechanism for the implementation of the Trafficking in Persons Protocol evolves into much more than a legalistic process and connects with the reality of the impact of human trafficking and the limits of the current response by states. ■

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RÉSUMÉ

Any Progress Yet? The Role of Civil Society in Monitoring Anti-Human Trafficking Efforts

JESSICA JAHN ET YVON DANDURAND
International Centre for Criminal Law Reform and Criminal Justice Policy, Vancouver (BC)
Jessica.Jahn@telus.net Yvon.Dandurand@ufv.ca

Une nouvelle occasion d'améliorer la mise en œuvre du protocole visant à prévenir, réprimer et punir la traite de personnes, additionnel à la Convention des Nations unies contre la criminalité transnationale organisée, s'est présentée après l'instauration récente d'un mécanisme d'examen, lequel vise à aider les États à recueillir des renseignements crédibles sur leur mise en œuvre respective de la Convention et du protocole, et à accroître la responsabilisation relative à l'effort déployé sur les plans mondial et national pour lutter contre la traite de personnes. Les auteurs reconnaissent que la participation d'organisations de la société civile, comme les organismes non gouvernementaux, les établissements d'enseignement, les associations communautaires et autres groupes, s'avère essentielle. Ils font observer que le Canada pourrait montrer la voie à suivre en décuplant ses efforts pour inclure la société civile dans le processus d'examen davantage que le minimum requis.

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Forced Labour In Canada – A Call for Proactive and Collaborative Police Response

JAMES BROWN
James Brown served with the Toronto Police Service for 33 years before retiring as an Inspector in 2015. Following his retirement, he returned to academia and is currently a doctoral candidate in Policing and Community Safety with the Metropolitan London University (UK). He serves as the Executive Director of the Global Resource Epicenter Against Human Trafficking (GREAT), a Canadian-based charity.
Email at james.brown@great.ngo.

Although Canada has had a few successful labour trafficking convictions since the introduction of anti-human trafficking laws in 2010, the overall response by police services has been limited and needs to be expanded through enhanced leadership, training and community relationships. Fortunately, there are many global models that we can look to for good practices that can help us identify opportunities for refocusing our community safety efforts that may lead to greater community collaboration as well as improved community well-being.

HOW CANADIAN COMMUNITIES ARE RESPONDING TO FORCED LABOUR AND HUMAN TRAFFICKING AND OPPORTUNITIES FOR IMPROVEMENT

LABOUR TRAFFICKING IN THE CONTEXT OF HUMAN TRAFFICKING

Since the start of the third millennium, the term "human trafficking" (HT) has moved from the domain of policy analysts and research specialists into the daily lexicon of media and community activists. While the circumstances that drive, motivate and create opportunities for human trafficking have existed for centuries, changes in our codification of human trafficking and our responses to it are continually shifting and adapting. Today, the issue and stories of HT are regularly reported in the myriad of media outlets. Despite the news hype and Hollywood presentation of the issue, however, practical efforts at combatting all forms of human trafficking are still scarce across Canada.

CHANGES TO THE CODIFICATION OF HUMAN TRAFFICKING IN CANADA

In Canada, legislative changes to the Criminal Code in 2010, continued to focus mainly on the forced sale of sexual services and sexual exploitation (also see Boillat-Madfouny in this issue). Although the legislation (2005, Sec. 279.04) already spoke to the issue of "labour" and its placement in the Criminal Code as a subsection of kidnapping and forcible confinement (i.e., s279) alone, it does not focus solely on "sexual" exploitation. However, the legislation portends principally to sexual assault and sexual exploitation, with the Department of Justice noting that "Prior to the enactment of specific criminal offences, Canada's criminal laws addressed TIP through offences of general application including...prostitution-related offences (in particular, s212) (Federal/Provincial/Territorial Working Goup..., 2015). Much of the news, media, and public service announcements regarding HT focus on the exploitation of young women for sexual purposes to the point where the terms "human trafficking" and "sexual exploitation" have become virtually synonymous in the media and the

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entertainment industry. The excessive conflation of sex trafficking schemes with HT in general, however, is not limited to news, media and public service announcements. It also plays out in the way cases related to the trafficking of human labour are conducted and classified.

The work and effort undertaken by many groups to assess the global problem of HT suggest that the estimated number of persons trafficked for forced labour, in some regions of the world, outnumbers those trafficked for sex (Global Slavery Index, 2019). This is partially attributable to the fact that labour trafficking is both gender and age agnostic. Moreover, while Canadians may look at different types of labour trafficking around the globe and feel that Canadians are somewhat immune to certain types of exploitation, it is a false sense of security. As defined by the International Labor Organization (2019), labour trafficking is the unlawful exploitation of labour and includes the practice of "forced labour", defined as "all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily". It is equally noteworthy that while this criminal threshold requires a person to fear for their safety or the safety of a person known to them, the definition does not address other methods of exploitive control used by traffickers. This can include such factors as debt bondage, family commitment, social stigmatization, or public exposure and shaming. These features of the exploitation methods used by human traffickers in Canada are likely unreported and constitute an essential gap in HT literature in Canada.

LABOUR TRAFFICKING IN CANADA

As part of the government's efforts into better understanding HT in Canada, the RCMP carried out a Threat Assessment in 2010. The results "identified both men and women migrant workers as a vulnerable group for forced labour". These findings led to investigations into claims of labour exploitation centred on the treatment of migrant workers, and in some cases, the fraudulent use of the Temporary Foreign Worker Program. The report on Improved Response to Labour Trafficking (Dandurand and Wilson) in 2017 highlighted the significant issues around labour trafficking, but it was the 2013 Public Safety Canada publication that undertook an analysis of the labour trafficking investigations that had been nationally identified, and of which 47 occurrences had been reported to law enforcement agencies, with only three resulting in a judicial finding of trafficking (Sikka, 2013). As a current comparator, the 2018 Annual Report on trafficking on persons from the UK National Police Chiefs' Council identified approximately 200 investigations for labour trafficking across the UK that year. The report goes on to cite the increase in police efforts in this field: "since the start of 2017, the number of modern slavery operations undertaken by the police service at any one time has tripled (rising from 188 in December 2016 to 568 in February 2018)" (HM Government, 2018).

At the time of this writing, the Barrie Police Service (Ontario) had just concluded a significant investigation resulting in the identification and release of 43 persons being held by traffickers. The traffickers had deceived the Mexican victims into believing that they would receive the opportunity to obtain training, education and a path to permanent Canadian citizenship. However, once in Canada, they were forced to work in hotel cleaning services and provided "squalid conditions" in which to live (Thompson, 2019). This type of investigation, however, is rare and was undertaken jointly by the Barrier Police Service, the Ontario Provincial Police and the Canadian Border Services Agency. Barrie's Chief of Police Kimberley Greenwood had publicly acknowledged that the Barrie Police had not (to date) seen a "labour trafficking operation of this size and nature in our area, and this is very disturbing". While the elements of this investigation continue to unfold at the time of this writing, this event constitutes the most substantial recovery of labour trafficked victims in Canada to date.

Another indication that forced labour may not be being taken seriously enough in Canada is evidenced by the recent conviction of a Halifax businessman convicted in what was called "an immigration fraud case". The offender, Hector Mantolino, "pleaded guilty in December 2017 to misrepresentation under provisions of the Immigration and Refugee Protection Act" (Bundale, Jan. 4, 2019, The Canadian Press). The federal Crown accused Mantolino, "the operator of Mantolino Property Services Ltd. of advising 28 foreign workers to provide misleading and untruthful statements on their work permit applications between July 2010 and April 2013". Some of the workers were "paid as little as $3.13 per hour after various deductions" and were counselled by Mantolino "to lie about their

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wages if they wanted to stay in Canada". Mantolino was thus arguably indictable under existing HT legislation in Canada:

> Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable (Criminal Code of Canada, Trafficking in persons s279.01).

Had Mantolino been charged under these CC provisions, the sentencing would have called for "imprisonment for a term of not more than fourteen years" (CC s279.01b).

Mantolino was charged under the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27), but not to full extent, since an offender, under Part 3 (Enforcement: Human Smuggling and Trafficking) of the Immigration and Refugee Protection Act (S.C. 2001, c. 27) with respect to a group of 10 persons or more, is guilty of an offence and liable on conviction by way of indictment to a fine of not more than $1,000,000 or to life imprisonment, or to both. The outcome in the Mantolino case speaks to the fact that existing HT legislation is not adequately being used to deter forced labour that is not sexual in nature. This construct may also be playing a role in obscuring this very insidious element of HT that has a long history in Canada but to date has failed to garner much attention from either the media or the public. While hotel and office cleaning operations using trafficked labour have been prosecuted in Canada before (Domotor et al., 2010), cases in the U.S. include farm labour, restaurants, nail salons and massage spas.

Despite a proportional demand for such labour in Canada, and since the Temporary Foreign Worker program allows the intake of foreign workers with little follow up, we have had few investigations into labour trafficking in those fields. One of the most significant challenges for police in uncovering labour trafficking operations is the ability of traffickers to convince the persons being trafficked that they are complicit in the crime. The victims are usually told that if they go to Immigration Canada or some other official agency, they would be deported back to their native country. To date, all labour trafficking investigations made public have included only foreign-born victims. Without the benefit of language and local knowledge, victims only have their traffickers as a source of information and may be convinced that they, if discovered by police, will be subject to sanctions that would be worse than their existing conditions.

WHERE IS THE VICTIM?

Human trafficking occurrence is unusual and challenging for police services in that even when the exploitation may contain the elements required to meet the criminal threshold, identifying the crime and the "victims" can be challenging.

In the Barrie case, the victims were conducting legal and legitimate work (cleaning of hotel rooms); therefore, when their circumstances are revealed (labour exploitation), action can be taken in which those being exploited are viewed as "victims of crime" and they can be treated and responded to accordingly. When labour trafficking victims are forced to participate in illegal activities (such as illicit drug production, including cannabis "grow-ops"), historically in Canada, have been treated as criminal perpetrators versus victims of labour trafficking while in the UK such victims are specifically codified (HM Government, 2018).

In the Halifax case of Mantolino, the victims were also conducting legal and legitimate work (cleaning services) and the charges involved exploitation, making the Philippian workers victims of crime, yet the entire investigation, charges, and criminal proceedings focused only on immigration fraud.

LACK OF PROACTIVE INVESTIGATIONS

In discussions with HT investigators from police services in Ontario, the investigators acknowledge the lack of available investigative resources to support their current reactive investigations, let alone to undertake proactive investigations. Most units are, therefore, left to undertake reactive investigations that are identified by front-line uniformed officers, in circumstances where the information and evidence collection occurs after the trafficker is either aware of the investigation, or has been charged. Given the evidentiary threshold for HT conviction, this is an extremely challenging endeavour and investigations therefore result in related charges other than human trafficking as they have a more attainable evidentiary threshold.

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Anne Kelly
Commissioner of the Correctional Service of Canada (CSC)
Commissaire du Service correctionnel du Canada (SCC)

THURDAY / JEUDI, NOVEMBER 7 NOVEMBRE
RETROSPECTIVE HISTORY OF CRIMINAL JUSTICE
RÉTROSPECTIVE HISTORIQUE SUR LA JUSTICE PÉNALE

Honorable Judge
L'honorable juge
Guy Cournoyer

Honorable Judge
L'honorable juge
Pierre Hamel

EVOLUTION OF CANADIAN PENAL POLICIES

Professor
Professeur
Dr. Anthony Doob

ROUND TABLE: THREE MAJOR CONTEMPORARY ISSUES IN CRIMINAL JUSTICE:
Indigenous | Mental health | Victimology

Mr. Ivan Zinger
Correctional Investigator of Canada
L'enquêteur correctionnel du Canada

Senator
Sénatrice
Patti Laboucane-Benson

Dr. Anne Crocker
Professor in physiatry and addictions at McGill University and Director of the National Forensic Psychiatry Institute of Philippe Pinel
Professeure titulaire au département de psychiatrie et d'addictologie, Université McGill et directrice de la recherche et de l'enseignement universitaire à l'Institut national de psychiatrie légale Philippe-Pinel

Heidi Illingworth
Federal Ombudsman for Victims of Crime
L'ombudsman fédérale des victimes d'actes criminels

FRIDAY / VENDREDI, NOVEMBER 8 NOVEMBRE
HUMAN RIGHTS / DROITS HUMAINS

Senator
Sénatrice
Kim Pate

Marie Rinfret
Ombudsman
Protectrice du citoyen

Right Honourable
Richard Wagner, C.P., Chief Justice of Canada
Juge en chef du Canada

SATURDAY / SAMEDI, NOVEMBER 9 NOVEMBRE
CLOSING PRESENTATION AND CLOSING REMARKS
PRÉSENTATION ET REMARQUES DE CLÔTURE

Pierre Noreau
Professor, Public Law Research Center at Université de Montreal
Professeur au Centre de recherche en droit public de Université de Montreal

Senator / Sénateur
Serge Joyal
Lawyer and legal expert by training, Senator Joyal's areas of interest and specialization include legal and constitutional issues, as well as parliamentary law.
Avocat et juriste de formation, il s'est spécialisé dans les domaines des affaires juridiques, constitutionnelles et du droit parlementaire.

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DISRUPTIVE INVESTIGATIONS VS COLLABORATIVE INVESTIGATIONS

The United Nations Office of Drugs and Crime (UNODC) has provided written guidance for justice and police officials in conducting HT investigations (United Nations Office on Drugs and Crime, 2019). The UNODC suggests that the most successful human trafficking investigations are proactive ones in which police learn of the circumstances, and then carry out a proactive investigation in order to secure evidence before initiating arrests. The second recommendation from the UNODC is the use of disruptive investigations, in which evidence cannot be gathered to support a criminal prosecution but there may be evidence for enforcement of other laws or regulations, ranging from enforcement of municipal by-laws, fire-code, business regulations, labour regulations, or taxation enforcement. Such investigations intend to disrupt the economic venture of the traffickers while providing an opportunity for the persons being trafficking to identify an exit path from their environment. This concept is generally not well-received in discussions with police investigators as it provides no guaranteed "rescue" of trafficking victims and offers a high probability of trafficker relocation with continued victimization.

IS THERE ROOM FOR IMPROVEMENT?

As with all public safety issues, responses by both the community and the police can improve if they focus on the issue and allocation of resources. To date, Canadian police services continue to respond to fiscal pressures to constrain or reduce budgets while time demands associated with traditional policing issues continues to rise (Expert Panel on the Future of Canadian Policing Models, 2014). However, as discussed above, police response protocols require proactive investigations that to date have been severely lacking. We need to determine if it is reasonable to ask police leaders to commit resources to a resource-intensive investigation in which no one has "put up their hand" to self-identify as a victim, while at the same time those police leaders are finding it challenging to have their resources engaged with people that are demanding resource-intensive police services.

Therefore, when political leaders are making decisions on police budgets and resource allocations, they should be mindful of these challenges, and that a silent and unseen victim group may lie under the surface of legitimate labour in Canada.

WHAT CAN BE DONE?

Although dedicated HT units have proved to be significantly more successful than non-dedicated investigative units in U.S. studies, there are still many other steps for police leaders to take in combatting labour trafficking.

Training

Training on the topic, ranging from recognition of HT circumstances to investigative methods for proactive counter-trafficking initiatives, through to support for trafficking victims, is essential. Such training has consistently been shown to be the most impactful step that police services can take in combatting human trafficking (Farrell et al., 2008). The U.K. model provides a myriad of training sessions for constables through to chiefs, ranging from 1-4 days in duration which were provided to over 2,500 members in 2018. Furthermore, in certain U.S. studies, two-thirds of surveyed police officers admitted that mass media and the entertainment industry were their only source of information about human trafficking.

Policies

Before commencing training of personnel, police services need to develop policies about the identification of HT occurrences, the assignment of investigative personnel, and the integration of community resources in the organizational response. Issues ranging from the use of interpreters to the laying of criminal charges when forcibly engaged in illegal activities, through to funding for accommodation, clothing and food, all need to be addressed before commencing major proactive investigations.

Resources

Human trafficking requires broad community support to combat. Police services need to engage community-based victim services, social services, health care providers and community NGO's that work with trafficking victims. Further, police services need to engage other community-based agencies in their proactive investigations, ranging from labour inspectors through to forensic auditors, as well as the Canadian Revenue Agency and Canadian Border Services were suspects, victims and products are transiting national borders.

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NEXT STEPS

While it may be possible for individual police services to advance these issues on their own, national leadership and provincial-level support are integral to success. The development of executive-level training and awareness at the national level will help support the development of police training at the provincial level. Police leaders also need to engage community resources across the safety and security web, not just in a "post-investigative support" role, or in a community-engagement role. Overall, this is an area in which police services across Canada have tended to be weaker than police services in the U.S. or U.K. Even though, Canadian police leaders have done tremendous work in community engagement, their collaborative work in investigative fields needs to be improved to combat human (labour) trafficking effectively. Fortunately, Canadian police leaders are generally well connected with those community resources but now need to look at them through a slightly different lens, since HT takes an entire coordinated community to combat effectively. ■

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RÉSUMÉ

Forced Labour In Canada – A Call for Proactive and Collaborative Police Response

JAMES BROWN

RÉACTION DES COMMUNAUTÉS CANADIENNES FACE AU TRAVAIL FORCÉ ET À LA TRAITE DE PERSONNES ET PLACE À L'AMÉLIORATION.

Bien que le Canada ait prononcé quelques condamnations fructueuses pour traite de personnes aux fins de travaux forcés depuis l'adoption en 2010 de lois visant à lutter contre ce crime, l'intervention générale des services policiers demeure limitée et doit être élargie en améliorant le leadership, la formation et les relations avec la communauté. Heureusement, il existe de nombreux modèles internationaux qui peuvent nous guider en matière de bonnes pratiques et nous aider à reconnaître les occasions de recentrer nos efforts sur la sécurité de la communauté afin de favoriser une plus grande collaboration et viser le mieux-être au sein de cette communauté.

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Examining Issues and Cases Related to Human and Sex Trafficking in the Atlantic Region of Canada[1]

JOSEPHINE L. SAVARESE
Associate Professor, Department of Criminology and Criminal Justice, St. Thomas University, Fredericton, New Brunswick,
Email: savarese@stu.ca

This article investigates issues and cases related to human and sex trafficking in the Maritime provinces (i.e., New Brunswick, Nova Scotia, and Prince Edward Island). While the emphasis in this article is regional, the problems discussed are a microcosm of a global phenomenon. Commentators describe human trafficking as one of the world's fastest growing crimes despite actions to reduce trafficking and in the face of efforts to ensure that trafficking does not remain a largely hidden problem.

In Canada, efforts to address trafficking have occurred at the federal level through changes to criminal statutes. Readers of this publication may already know about the criminal law that prohibits trafficking in Canada, but an important milestone was reached in 2005 when Canada added a section to the *Criminal Code* that specifically addressed trafficking. A full discussion of this appears in publications, including *Laws to Combat Sex Trafficking: An Overview of International, National, Provincial and Municipal Laws and Their Enforcement* by Nicole Barrett and Margaret Shaw (2013) for the *Canadian Women's Foundation: Task Force on Trafficking of Women and Girls in Canada*. Since 2005, several changes have been made to Canadian criminal law (see Ibrahim, 2016 for details). In addition to the federal actions, anti-trafficking work is being carried out at a provincial level through advocacy organizations and justice agencies, as described by Barrett and Shaw. These authors clarify that measures are occurring at the local level to minimize harm, to advise residents on warning signs and to reinforce the importance of prevention.

The research decisively shows that, while the problem of trafficking is not specific to any one locale, understanding and addressing the issue may benefit from more focused, smaller scale investigations, such as this one. Scholars, including Winterdyk, have pointed out the need for advocacy against human trafficking within a more localized context (Winterdyk, 2019), earmarking this investigation into human trafficking in the Maritime provinces as timely and essential. Provinces in Canada's Atlantic region are reputedly welcoming and residents are warm and down to earth. Various media reports have stressed, however, that human trafficking is a significant problem in the Atlantic region, particularly in Nova Scotia.

This article presents contextual information on issues relating to trafficking in the Maritimes and shares information on victim vulnerabilities to illustrate some of the critical challenges. The problem is wide ranging and significant; but, while the overview is alarming, efforts to address the problem have been adopted. In February 2018, Cpl. David Lane of the RCMP human trafficking division

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acknowledged positive news for Nova Scotia by noting that citizens, the police and community activists were coming together to find solutions to address the problem (Mulligan, 2018). There are several justice-related initiatives aiming to remedy and reduce trafficking underway in the Atlantic region. While preventative efforts are sincere, Cpl. Lane is among the advocates who argue that communities must enhance their efforts to protect persons vulnerable to victimization.

REASONS FOR THE PARTICULAR FOCUS ON NOVA SCOTIA

The Province of Nova Scotia is of interest because there have been several newsworthy cases, including that cited in the title. In the 2017 case, a 22-year old convicted trafficker, Owen Gibson-Skeir, faced an additional sentence for his threatening behaviour towards a young victim he was found to have trafficked. As Gibson-Skeir was escorted from the courtroom to a correctional facility to begin his sentence, he threatened the 14-year-old complainant who was present in the room and when looking at her said "I'll be out". This public display resulted in further charges of uttering threats and intimidation of a justice participant. The unnamed young woman had provided evidence that ended in the trafficking convictions that brought Gibson-Skeir before the Halifax provincial court in the first place. While the trafficking matter was set for trial, Gibson-Skeir eventually pleaded guilty to various charges including trafficking of a person under age 18 years and benefiting materially from trafficking, in addition to sexual assault. The troubling circumstances and the fact that Gibson-Skeir was the first to be convicted of human trafficking in Nova Scotia made the case highly newsworthy. During the sentencing hearing, Crown attorney Catherine Cogswell described the harms to the victim, which included threats and surveillance as well as pronounced physical, sexual, emotional and financial abuse. On the crime of trafficking more generally, Cogswell stated: "Human trafficking is a combination of physical and emotional torture" (MacDonald 2017). The trafficking charges Gibson-Skier faced resulted in a sentence of seven years in prison. In 2018, the additional sentence of one year was imposed for Gibson-Skeir's threatening behaviour towards the victim.

This disconcerting case is one indicator that addressing human and sex trafficking in the Atlantic region is a vital justice concern.

FURTHER INFORMATION ON THE SCOPE OF THE PROBLEM – DETAILS ON NOVA SCOTIA, PRINCE EDWARD ISLAND AND NEW BRUNSWICK

In September 2018, Josh Healey, a writer with the Nova Scotia-based news outlet, the Chronicle Herald, reported that "Human trafficking rates in Halifax [were] above the national average". Healy cited human trafficking reports prepared by Statistics Canada, which analyzed incidents of human trafficking between 2009 and 2016 based on police-reported incidents. The findings revealed that Halifax was a problem city concerning this type of criminal harm. It was on par with Ottawa in that it had the highest number of trafficking incidents in Canada. Specifically, Halifax had 5.7 incidents per 100,000 people in 2016. In contrast, the rate of incidents across Canada was much lower at 0.94 (Ibrahim, 2016).

Given the focus on the Maritime provinces, it is notable that the Province of Prince Edward Island numbers are below the national average. There were zero police-reported human trafficking violations between 2009 – 2016. This finding may be attributable to the fact that trafficking tends to be concentrated in larger, more urbanized settings; yet, more research would help in determining whether trafficking remains hidden in Prince Edward Island. More generally, advocate and scholars have emphasized the clandestine nature of trafficking as an ongoing policy problem. This concern may also apply to the Province of New Brunswick. Between 2009 – 2016, there were only three police reported human trafficking violations (Ibrahim 2016). This may suggest that under-reporting is a problem in that province. Details from a 2016 case shed light on human trafficking in New Brunswick; the RCMP reported that a 50-year-old man entered a guilty plea to conspiracy to commit human smuggling when a woman in her forties of Ecuadorian background entered the United States over the Saint John River in a paddle boat (Quon, 2017).

New Brunswick-based advocates argue that the extent of the trafficking problem is considerably more expansive than the numbers indicate. In December 2018, the Canadian Broadcasting Corporation reported that "Sex trafficking [was] 'definitely happening' and 'definitely on the rise "in NB". The advocates interviewed maintained that traffickers often operate undetected due to the widely held view that trafficking was not of concern in New Brunswick. This incorrect assumption

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provided traffickers with an advantage (Blanch, 2018). Jenn Fredericks, an outreach worker with the Moncton YWCA and the chair of the Sex Workers Action Group, confirmed that the crime of sex trafficking was a problem and on the increase in Moncton, thereby countering the view that trafficking occurs only in big cities. Based on her work in the field, Jenn Fredericks stated the problem was "happening ... in New Brunswick", especially among younger persons in the 15 to 22 age range, whom Fredericks described as "very vulnerable and high-risk". For advocates, raising awareness was critical to prevention and a Provincial strategy was developed by the Human Trafficking Working Group. The group is comprised of police, provincial government representatives and various community organizations. One member, Cindy Miles, Executive Director of the non-profit Partners for Youth, recently emphasized that the risk factors included poverty, histories of violence, lower levels of education, and fewer social supports (Blanch, 2018).

OUTLINING ADVOCACY AND EDUCATIONAL EFFORTS

While the numbers from Nova Scotia are particularly disconcerting, it is important to stress that preventative and educational efforts have been implemented, such as those previously mentioned in this article, including the advocacy work happening in both Nova Scotia and New Brunswick. While not focused only on the Atlantic region, two women based in Nova Scotia, Linda MacDonald and Jeanne Sarson (see their article in this special issue), have brought attention to the potential severity of the abuse in trafficking cases. In November 2018, they appeared before the United Nations Committee Against Torture to encourage the Canadian government to amend the *Criminal Code* to include "non-state torture" as a separate crime.

Significant events have also occurred at educational institutions in the Maritime region. At St. Thomas University, in Fredericton, New Brunswick, for example, Winterdyk offered a specialized course in human trafficking in 2017 in his role as the Endowed Chair of Criminology and Criminal Justice. During his visit, he delivered the public lecture "Red Light Human Trafficking: The Elusive Enigma of Modern Day Slavery". The lecture informed students and the broader community on the problem and potential policy and programmatic solutions. A point raised in this lecture were the low conviction rates for trafficking. Although Winterdyk stressed that this is a broad Canadian issue, the relatively few successful prosecutions in Nova Scotia are a concern. Statistics cited in the Chronicle Herald from Nova Scotia's Public Prosecution Service confirmed a much lower conviction rate in that province compared to the national average. One hundred and five human trafficking charges were laid in Nova Scotia between 2012 and 2017. In confirmation of the more general point raised by Winterdyk, only five of fifty-five human trafficking cases in the province ended in a conviction, for a nine percent conviction rate (Healey, 2018).

AREAS FOR FURTHER RESEARCH AND POLICY DEVELOPMENT

Based on this brief overview, it can be argued that policies are needed to undermine the gendered violence in the form of human and sex trafficking that is starkly represented in the Nova Scotia figures and that may be under-reported in Prince Edward Island and New Brunswick. Scholars like Barrett and Shaw have argued for enhanced support for victims to help ensure their participation in criminal prosecutions. Others have focused on social justice related policies to address the gendered inequities that often increase women's vulnerability to trafficking, primarily if they experience social and economic risk factors (Barrett, 2013). Some suggestions to support vulnerable persons and at-risk families, often headed by women, are wage and employment equity, affordable housing, educational opportunities and community development among others that would result in economic and social achievement.

The importance of addressing disparities as a strategy to combat trafficking is supported by research findings and advocates. In her 2013 study, Nicole Barrett included an overview of certain Canadian provinces where trafficking was a known issue, including Nova Scotia. Police officers who served as research informants believed that victims were often Black Nova Scotian women residing in group homes and lacking social supports and that Indigenous women and girls were particularly at risk. More recently, this speculation was confirmed by the law enforcement participants in Barrett's 2013 study. Patty Musgrave, the Indigenous affairs coordinator at Mount Allison University and a member of the Sex Workers Action Group in Moncton (NB) has denounced traffickers' tendency to target Indigenous women. Musgrave suggests that an enhanced emergency services network is

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required to assist women and girls, particularly Indigenous, to evade the traffickers that seem to prey on them (Blanch 2018). Musgrave stressed that poverty contributes to the vulnerability of Indigenous women and girls in New Brunswick. She stated that trafficked women and girls might be in "a precarious situation", or have experienced "some dark times at home" making them more susceptible because "If you have somebody offering to buy your clothes, or bring you to Moncton where you have access to more stuff then it's pretty easy for them to get roped in". Musgrave urges further dialogue on human trafficking and to raise awareness on the risks faced by women and girls.

CONCLUSIONS

Concerns from two opposing ends of the spectrum were investigated in this text. One problem noted was that the incidence of reported cases in the Province of Nova Scotia is above the national average. In contrast, statistics from Prince Edward Island suggest that trafficking is either absent or occurring in an underground manner and similar points were raised about New Brunswick. These concerns suggest that additional work to inform and educate is required. Advocates from both Nova Scotia and New Brunswick have highlighted that racialized and class-based social exclusion is a factor in the vulnerability of victims. This article calls for greater attention to trafficking in Atlantic Canada that would include recognition of the social, economic, racialized and gendered disparities cited as driving factors. ■

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RÉSUMÉ

Examining Issues and Cases Related to Human and Sex Trafficking in the Atlantic Region of Canada

JOSEPHINE L. SAVARESE
Professeure agrégée, Department of Criminology and Criminal Justice, St. Thomas University, Fredericton, Nouveau-Brunswick, savarese@stu.ca

Cet article porte sur les enjeux et les dossiers relatifs à la traite de personnes à des fins d'exploitation sexuelle dans les provinces maritimes (c.-à-d. le Nouveau-Brunswick, la Nouvelle-Écosse et l'Île-du-Prince-Édouard). L'article traite la question d'un point de vue régional, mais les problèmes abordés représentent un microcosme d'un phénomène mondial. Les commentateurs décrivent la traite de personnes comme l'un des crimes aux taux de croissance mondiaux les plus élevés malgré les mesures de lutte contre la traite et les efforts déployés pour éviter que ce crime ne demeure un problème largement méconnu.

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Thinking Critically about Human Trafficking Claims: Definitional and Conceptual Challenges

ANN DE SHALIT & EMILY VAN DER MEULEN
Ryerson University

The way human trafficking is being defined and conceptualized in Canada includes a conflation of trafficking with sex work. This conflation results in false assertions about the size and scope of the problem; increased appeals to criminal justice interventions; and deflection from labour and human rights abuses in industries other than the sex trade. The authors maintain that such definitional issues skew funding priorities. In turn, police services and non-governmental organizations (NGOs) frequently rely on misguided trafficking claims in order to secure much-needed government resources, thereby perpetuating widely discredited narratives about sex work and migration. The authors also suggest that frontline organizations and agencies must seriously consider the voices of migrants and sex workers, who are often the unsuspecting targets of morally-driven anti-trafficking efforts.

INTRODUCTION

In recent years, human trafficking has become one of the most widely publicized crimes internationally. We listen in shock as media outlets, politicians, and frontline workers report on the prolific problem, informing us that it can happen to anyone and anywhere. Images of women and girls handcuffed and blindfolded, crouched in a darkened corner of a room, or with male hands covering their mouths have become the norm (De Shalit, Heynen & van der Meulen, 2014). However, despite this sensationalist imagery, it remains unclear which exact conditions meet the legal threshold of trafficking as set out in the *Immigration and Refugee Protection Act* and the *Criminal Code of Canada*. Also, in cases where the human trafficking label is applied, it is further unclear how these instances differ from other problematic labour trends or dangerous migratory conditions. What is clear, is that anti-trafficking policing efforts and social service programming can lead to increased criminalization and marginalization of the very "victims" they aim to protect (NSWP, 2018).

In 2017, the House of Commons Standing Committee on Justice and Human Rights (hereafter: the Committee) conducted a study "to learn more about human trafficking in Canada and about efforts to increase awareness of trafficking, prevent and detect it, and prosecute traffickers" (JUST, 2018). Its goal was "to make recommendations that address the needs of victims of this horrible crime and other stakeholders". Between February and May 2018, Committee members, along with 23 guest parliamentarians, held eight publicly recorded hearings in Ottawa in addition to meetings in Halifax, Montreal, Toronto, Edmonton, and Vancouver. They hosted over 50 witnesses (including the authors of this paper) and received 55 written briefs from a range of organizations, advocates, and others.

Based on our joint presentation to the Committee and our examination of other witness accounts, we have identified some issues with how human trafficking is being defined and conceptualized in Canada. It is evident, for example, that trafficking is conflated with sex work, resulting in false assertions about the size and scope of the problem,

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increased appeals to criminal justice interventions, and deflection from labour and human rights abuses in industries other than the sex trade. Also evident is the extent to which police services and non-governmental organizations (NGOs) further exacerbate these definitional issues, often driven by a desire to acquire additional funding for already under-resourced programming. Empirical research conducted by De Shalit (co-author of this article) has revealed that organizations providing frontline services frequently perpetuate widely discredited narratives about sex work and migration in order to secure much-needed government resources. Thinking critically about the validity of claims of trafficking and considering the unintended consequences of anti-trafficking efforts are thus highly necessary.

CONCEPTUALIZING TRAFFICKING

Looking at the different ways in which human trafficking is defined is not merely a conceptual or academic exercise. For example, definitional differences can have significant implications for migrants' and sex workers' lived experiences while skewing funding priorities toward enhanced law-and-order approaches and away from human rights and social justice frameworks. When the media and various stakeholders (e.g., policy makers, frontline workers, police, etc.) talk about human trafficking, they are often referring to problematic or exploitative conditions within the sex industry, disregarding potential abuses in other industries. This suggests that the issue is less about the specific legal definition of human trafficking and more about how it is applied and who is adversely affected as a result. While police and social services often report using the *Criminal Code* (s. 279) definition of trafficking in persons, in practice that definition is interpreted in an overly-broad way that captures many instances which do not and should not meet the legal threshold.

These issues were evident at the Committee meetings where many witnesses advanced an anti-sex work position, and used "human trafficking" synonymously with "sex trafficking", "sexual exploitation", and "sex work/prostitution". This meant that despite its stated focus on human trafficking (non-industry specific), the Committee heard almost exclusively about trafficking in the sex trade. For instance, former Conservative Member of Parliament Joy Smith, noted, "there are many definitions that people are confused about on human trafficking […], but I often say that if someone is being bought and sold, that's human trafficking" (March 1, 2018). It is telling that the notion of "bought and sold" is not further complicated as a symptom of the current neoliberal climate or as a moral panic response characteristic of anti-sex work prohibitionists. Smith went on to say, "people call it prostitution, but I don't like to call it prostitution. I don't use that word", preferring instead to draw on tropes of trafficking (March 1, 2018). Others likewise engaged in rhetorical conflation or presented statistics lacking in empirical grounding. In her presentation, Jodi Mosley from the Ottawa Coalition to End Human Trafficking noted that "70% of women who are working in the sex trade are being trafficked" (March 27, 2018). Similarly, Mélanie Carpentier from La Maison de Mélanie claimed that "80% of girls working in the sex trade and strip clubs were at one time or another under the control of an exploiter" (May 10, 2018).

The conflation of sex work and human trafficking and the further reduction of human trafficking to sex trafficking occurs in part due to lack of knowledge about how labour is organized within the sex industry, or because of moral or political opposition to the commercial exchange of sexual services. Nancy Morrison, former judge of the Supreme Court of British Columbia, suggested to the Committee that "to view prostitution as two equal parties striking a mutually beneficial agreement is nonsense. In the sex trade, the buyer has the power, and the young woman—the merchandise—has none" (May 10, 2018). This limited lens paints sex workers as always-already victims and neglects to interrogate the various forms of violence, exploitation, forced or coerced migration, and debt bondage that happen within other industries.

While defining human trafficking in increasingly narrow terms, that is, as sex trafficking or simply as sexual exploitation, NGOs and state agencies are simultaneously expanding how they interpret sexual exploitation itself. More-and-more activities, types of labour, and relationships within the sex-trade are being deemed exploitative, and thus considered evidence of trafficking, regardless of how the individuals within the situation understand their own experiences.

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Presenting important counter-narratives to those above were academics who conduct empirical research on sex work. Dr. Cecilia Benoit from the University of Victoria, for instance, testified that "despite sensational claims, the good news is that human trafficking is not widespread in adult prostitution in Canada. It appears that most adults who sell sexual services in our country have freedom of movement to work and are not coerced or exploited by others" (March 27, 2018).

MAKING FUNDING WORK

Definitional and conceptual issues also impact the disbursement of anti-trafficking funding for NGOs and police, often feeding into a self-fulfilling prophecy. Regarding NGOs, most of the organizations in Ontario that receive resources from the Ministry of Children, Community and Social Services (MCCSS) for anti-trafficking activities focus primarily on sexual exploitation, which is then conflated with sex work. At the Committee hearings, Sandra Rupnarain from the Peel Institute on Violence Prevention noted that "a year-end report suggests that 80% of all human trafficking victims are subject to sexual exploitation" (May 29, 2018). She went on to make references to human trafficking as the "global sex trade", "sex trafficking industry", and "sex trafficking trade" (May 29, 2018). Such narratives allow the trafficking label to be applied both narrowly to sex work alone and in an overly-broad way to these x industry as a whole.

When the government allocates millions of dollars towards fighting trafficking, it reshapes the priorities and approaches of frontline agencies that are often starved of resources. De Shalit's primary research with organizations across Ontario demonstrates that in order to make the government's funding mandate fit their needs and vice versa, NGOs will re-define some of their current clients, who may experience exploitation, violence, or coercion, as "victims of trafficking", or re-define their existing services as trafficking-specific programs. One of the organizations that De Shalit interviewed explains: "We said to the Ministry; you need to let us adapt the definition [of trafficking] to fit our needs. We recognize that Indigenous women are at high risk, and homeless women are at risk. So, every homeless Indigenous woman who comes to our shelter, we perceive her as being at risk of human trafficking or sexual exploitation… These women aren't being brought from hotel to hotel, but they are sexually exploited from couch to couch, so for us, that's the definition [of trafficking] that fits our needs". Most NGOs will not deny services to people who do not self-identify as trafficking victims but will often label them as such in their funding reports and promotional materials. As another organization interviewed by De Shalit notes: "We don't request that women identify as being trafficked. That is an intimidating label to give yourself. We will support every woman with the premise that she is at risk of being trafficked if she hasn't been already". One service provider even suggests that "any young girl is at risk [of being trafficked] nowadays. Any woman is at risk because we're vulnerable to wanting to be loved and cared for". We can see here how trafficking victims are socially and politically constructed and reinforced through funding priorities. There are notable exceptions to this, and certainly not all organizations are imposing the trafficking label; however, overall, De Shalit's findings indicate that for cash-strapped agencies, which are often confined to restrictive funding silos, the possibility of extra money or another grant can be enticing, especially since these resources could mean the continuation of a program or additional staff contracts. It becomes a cyclical issue: organizations receive funding which allows them to continue engaging in meaningful work but must (bureaucratically) define their clients as trafficking victims in order to do so.

Police impose the trafficking label on sex work-related activities, whether they are exploitative or not, in particular in "raid and rescue" operations. Backed by reported numbers of "saved" trafficking victims, governments are more likely to allocate resources accordingly. Lawyer Frances Mahon from Pivot Legal Society, an organization that supports sex worker rights, testified to the Committee that these invasive operations lead to "abusive police and immigration enforcement of sex workers and trafficking victims under the guise of human trafficking investigations" (May 29, 2018). The implications of this are especially evident in the case of migrant sex workers, who have a limited set of options when caught-up in an anti-trafficking raid in their workplace: one, they can identify as a victim of trafficking and possibly receive a temporary resident permit; alternatively, two, they can deny being a victim (or be denied the victim label because they do not fit a specific image) and be criminally charged, detained, and possibly deported. Based on these options, it

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is understandable if one would opt to identify themselves as trafficked.

For those who continue to maintain that they are not a victim of trafficking but resemble one based on popular imagery, police services may impose the label regardless, suggesting the "victim" is too afraid to admit it or that she is unaware of her victimization (e.g., Canadian Crime Stoppers Association, 2013). There is no way out of this logic loop for marginalized women. In some cases, those who are caught in the anti-trafficking net are experiencing violence, coercion, or problematic labour conditions; in other cases, they are not. Defining them as trafficked or *de facto* forcing them to self-identify in this way not only increases NGO, police, and government statistics on trafficking but also leads to unwanted and problematic state intervention.

CONCLUSION

The fight against human trafficking in Canada has, in many ways, become indistinguishable from the fight against prostitution. In the process, human trafficking rhetoric has focused almost exclusively on sex trafficking, thus dismissing sex workers' and migrants' articulation of their experiences while simultaneously ignoring the labour and human rights violations that exist in other industries. In response, sex worker and migrant rights advocates have sought to make space for self-interpretations that accurately represent a multitude of experiences within the sex trade and throughout the process of migration, which can include varying degrees of consent and coercion. When NGO and police funding dollars are tied to saving victims of trafficking, however, there is an incentive to dismiss nuanced realities in favour of a sensationalist trafficking story, resulting in skewed representations, misdirected government resources, and inflated trafficking statistics.

The dangers of this are reflected in the Committee's final report. While it briefly references the necessity of making a distinction between sex work and trafficking, its recommendations ignore the harmful consequences of anti-trafficking policy and practice in Canada (JUST, 2018). Of some benefit is the Committee's acknowledgement of the inconsistencies in trafficking definitions and data collection practices. It states, for example, that: "often, the data is collected using different methodologies and definitions of human trafficking, which makes it impossible to compare the information" (JUST, 2018, p. 52). To this, we would add that it is imperative to follow the definitions and conceptualizations advanced by migrants and sex workers themselves, rather than imposing financially lucrative or morally laden assumptions. Evidence-based, human rights, and harm reduction approach developed by sex workers and migrants can be considerably more effective at addressing problematic labour and seasonal conditions than initiatives implemented by those with little connection to the communities in question. ■

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RÉSUMÉ

Thinking Critically about Human Trafficking Claims: Definitional and Conceptual Challenges

ANN DE SHALIT ET EMILY VAN DER MEULEN
Ryerson University

La manière dont la traite de personnes est définie et conceptualisée au Canada amplifie l'association entre la traite et le travail du sexe. Cette association exagérée mène à de fausses assertions sur l'importance et la portée du problème et à une hausse des appels à des interventions en justice pénale. Elle détourne également l'attention des violations des droits de la personne et des travailleurs commises dans d'autres industries que celle du commerce du sexe. Les auteures soutiennent que de ces définitions problématiques faussent les priorités de financement. De même, les services policiers et les organisations non gouvernementales (ONG) se fient souvent à des allégations erronées sur la traite de personnes pour obtenir de précieuses ressources gouvernementales, perpétuant ainsi des allégations largement discréditées au sujet du travail du sexe et de l'immigration. Les auteures suggèrent d'ailleurs aux organisations et agences de première ligne de vraiment prendre au sérieux la voix des présumées victimes.

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Canada's Criminal Code Amendments for Trafficking in Persons (aka Human Trafficking)

FRANÇOIS BOILLAT-MADFOUNY*
Prosecutor (City of Montreal), Graduate Student (Faculty of Law - Université de Montréal);
Policy Review Committee Member (CCJA), CCJA Director (Representative of Québec)

*The author's opinions do not necessarily reflect those of the organizations for which he works.

This concise overview of Canada's implementation of the UN Palermo Protocol on Human Trafficking explores amendments to the Criminal Code with respect to trafficking in persons (TIP, aka HT). The author reviews the new provisions and how they have been interpreted in Canadian criminal jurisprudence so far. In this vein, the article explains the establishment of guilt (Actus reus and Mens rea) and Canada's broad approach of putting the notion of exploitation at the centre of its TIP legislation. The author also offers some clarifications on the invalidity of victim pre-knowledge/consent and the inclusion of transborder trafficking in Canada's TIP laws.

INTRODUCTION

In November 2005, sections 279.01 – 279.04 were integrated into Canadian Criminal Law through Bill C-49, An Act to amend the Criminal Code [(CC)] (trafficking in persons). These amendments were followed in 2010 with the addition of s. 279.011 related to the trafficking of persons under age 18 years. In 2012, the notion of "exploitation" was expanded with the replacement of s. 279.04 and the sentencing provisions (s 7) for TIP amended to extend the penalties to Canadian citizens abroad. Most recently, in 2014, the sentencing provisions for trafficking were toughened.

The implementation of Sections 279.01-279.04 within Canadian criminal law is an upshot of Canada's ratification of the United Nation's Palermo Protocol, which requires ratifying parties to criminalize within their own judicial systems various types of conduct identified and defined by the protocol. This short article will review these provisions and how they have been interpreted in Canadian criminal jurisprudence so far.

SECTION 279.01 *CRIM. C.*–TRAFFICKING IN PERSONS

This first section, 279.01, of Canada's human trafficking legislation creates the general offence of trafficking in persons. It reads as follows:

> "279.01 (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person or exercises control, direction or influence over the movements of a person, to exploit them or facilitate their exploitation is guilty of an indictable offence […]".[1]

What are the essential elements of this offense?

ACTUS REUS – THE MATERIAL ELEMENTS

There are several ways that the *actus reus*, or the material elements, can be established. The first part of s. 279.01 itemizes specific actions (i.e. recruit, transport, receive, hold, conceal or harbour). Proof of any one of these can constitute the *actus reus* of this offence. As an Ontarian court explained, "the human trafficking offences attempt to capture the different actors along the trafficking continuum, including those who do not directly exploit the victim's labour or services".[2] For instance, an individual who recruits

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a person, without afterwards effectively participating in the exploitation of the person, has still committed the *actus reus*.

The second part of 279.01 targets the conduct by which the accused exercises the "control, direction or influence" over the movements of another person. These notions refer to the nature of the relationship between the complainant and the accused and target a chain of incidents rather than an isolated act. The courts have paralleled the notions of "control, direction, or influence" of s. 279.01 to those applied in procuring (of sexual services) cases. The Quebec Court of Appeal's comments in *R. c. Perreault* (2015)[3] are helpful in interpreting the meaning of control, direction or influence in cases involving human trafficking in Canada:

> "The element of control refers to invasive behaviour, to ascendancy, which leaves little choice to the person controlled. This, therefore, includes acts of direction and influence. There is the exercise of direction over the movements of a person when rules or behaviours are imposed. The exercise of direction does not exclude the person being directed from having certain latitude or margin for the initiative. The exercise of influence includes fewer constricting actions. Any action exercised over a person intending to aid, a bet or compelling that person to engage in or carry on prostitution would be considered influence".

In sum, the conduct constituting the *actus reus* can either result from an isolated act identified in s. 279.01, or from coordinated efforts that exercise control, direction or influence on the movements of the alleged victim.

SOME CLARIFICATIONS

Before studying the fault element (*mens rea*) of s. 279.01, a few clarifications are in order.

First, Parliament decided that the consent of the victim to participate in the accused's conduct is not relevant.[4] Consequently, it is not a defence to suggest that the alleged victim had been interested and chose to participate in the identified conduct.

Secondly, Canadian jurisprudence has clarified that the crime of trafficking in persons is not limited to cases involving forcible movement *between borders*, contrary to what the defence counsel in *Urizar c. R* (2013)[5] argued, which was strongly rejected by the Quebec Court of Appeal. It did recognize that the transborder characterization of trafficking in persons was the central focus of the Palermo Protocol, as expressed in the Legislative summary of Bill C-49:

> "Although the definition does not specifically require cross-border movement, this is the focus of the Protocol, given its context within the Convention Against Transnational Organized Crime and its focus on border control".

However, even though other ratifying parties (e.g., Australia and the UK)[6] may have included a transborder movement aspect in the crime of trafficking in persons, the Canadian Parliament has privileged a broader approach by putting the notion of *exploitation* at the centre of the Canadian regime.

MENS REA – THE FAULT ELEMENT AND THE NOTION OF EXPLOITATION

The *mens rea*, or the fault element, is two-fold.

First, the accused must have had the required general intent to commit the acts that constitute the *actus reus*, whether it be the specific isolated conduct or act, or a chain of incidents that resulted in control, direction or influence on the movements of the alleged victim.

Secondly, – and this is the crux of the Canadian trafficking of persons provisions – the accused must have had the previously identified conduct concerning a person "for the purpose of exploiting them or facilitating their exploitation". Section 279.01 is a "specific intent" provision that requires the accused to have had that ulterior, specific intent of exploiting the alleged victim. This notion of specific intent can also be understood as the "reason" the conduct is done or the "object" the accused seeks to attain.

The notion of exploitation is pivotal and sets trafficking in persons apart from many other crimes.[7] It does not refer merely to that fact of taking unfair advantage of another person. It has been defined explicitly at s. 279.04 *Crim. C.*:

> "279.04 (1) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service".

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Whether there was exploitation or not according to 279.04 *Crim. C.* requires an *objective* assessment of the situation given all the circumstances. While the subjective perspective of the alleged victim is not irrelevant, 279.04(1) *Crim. C.* requires judges to analyze if the conduct could *reasonably* be expected to cause the other person to believe their safety was threatened if they failed to provide the labour or service.

However, not only is it not required that the alleged victim subjectively felt that her safety was threatened, it is also *not* necessary that it was *effectively* threatened.[8] Similarly, proof of *actual* exploitation is not required for the offence to be committed if the accused had the required specific intent of exploiting the person when committing the *actus reus*. The focus of s. 279.04 *Crim. C.* is the accused's state of mind; the fact that the accused achieved his purpose or not is irrelevant. Furthermore, the safety referred to in s. 279.04 includes both physical and psychological harm.

CONCLUSION

The previous section provided a brief overview of the essential elements of s. 279.01 *Crim. C.*. If the prosecution proves these elements beyond a reasonable doubt, the accused will be found guilty of trafficking of persons and be sentenced according to the law. Section 279.01, par. a) and b) and sections 718ss are relevant[9] to this exercise.

Other more specific trafficking of persons offences have been included in the Canadian regime. In 2010, Parliament added s. 279.011, which explicitly tackles the trafficking of children. Proof that the alleged victim was under 18, and that the accused knew this or was willfully blind to it, is an additional essential element that must be proven being any reasonable doubt.[10] Section 279.02, for its part, targets individuals who gain tangible benefits from the trafficking of persons and requires the prosecution to prove the accused knew that the profit was derived from the commission of a trafficking of persons offence. Finally, s. 279.03 targets individuals who, to commit or facilitate the offence of human trafficking, withhold any documents that establish or purport to establish another person's identity.[11]

In all, I trust that this short article helped provide an overview of some of the underlying questions that have been raised when prosecuting individuals under these new trafficking of persons offences. Nonetheless, let us be clear that this text does not comment on the efficiency and appropriateness of these provisions from a public penal policy standpoint. ■

NOTES

1. The constitutionality of sections 279.01ss have been tested. See *R. v. Stone and Bedford*, 2013 ONSC 653 and *R. v. D'Souza*, 2016 ONSC2749.

2. *R. v. Alexander*, 2016 ONCJ 882, par. 40.

3. *R. c. Perreault* (2015), 113 C.C.C.(3d) 573 (Q.C.A.).

4. S. 279.01 *Crim. C.*, par. 2: "(2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid".

5. *Urizar c. R.*, 2013 QCCA 46, par. 34.

6. For instance, Australia created different offences based on where the victim was moved towards or from (See Criminal Code Amendment (Trafficking in Persons Offences) Act 2005, No. 96, 2005, and s. 268-272 of the Criminal Code.). See also the United Kingdom's approach that considers transborder movement: [www.cps.gov.uk/legal-guidance/human-trafficking-smuggling-and-slavery].

7. *R. v. Alexander,* 2016 ONCJ 882, par. 43.

8. See for instance *R. v D'Souza*, 2016 ONSC 2749, par 130. This differs from, for example, the offence of criminal harassment (s. 264.1 *Crim. C.*), where the alleged victim's subjective fear that her safety is threatened is an essential element of the offence (*actus reus*).

9. *R. v. Crosdale*, 2018 ONCJ 800, par. 144; R. v. A.A., par. 85-86; *R. v. Urizar*, 2013 QCCA 46, par. 69; *R. v. Ngoto*, 2018 ONSC 3731, par. 72; *R. v. Antoine*, 2019 ONSC 3843, par. 33; *R. v. N.A.*, 2017 ONCJ 196, par. 66, 99; *R. v. Lucas-Johnson*, 2018 ONSC 3953, par. 157.

10. *R. v. A.A.*, 2015 ONCA 558, par. 82; *R. v. Crosdale*, 2018 ONCJ 800, par. 112-120; 142.

11. *R. v. S.*, 2015 ONSC 7749, par. 55.

RÉSUMÉ

Canada's Criminal Code Amendments for Trafficking in Persons (aka Human Trafficking)

FRANÇOIS BOILLAT-MADFOUNY*
Procureur (Ville de Montréal), étudiant de 2e cycle (Faculté de droit – Université de Montréal); membre du comité d'examen des politiques (ACJP), administrateur de l'ACJP (représentant du Québec).

* Les opinions de l'auteur ne reflètent pas nécessairement celles des organisations pour lesquelles il travaille.

Dans ce survol concis de la mise en application au Canada du protocole des Nations Unies de Palerme sur la traite de personnes, l'auteur explore les modifications apportées au Code criminel pour s'attaquer à cette problématique. L'auteur passe en revue les nouvelles dispositions et la manière dont elles ont été interprétées dans le cadre de la jurisprudence pénale canadienne jusqu'à présent. Dans cet esprit, l'article explique la déclaration de culpabilité (*Actus reus* et *Mens rea*) et l'approche générale que le Canada a adoptée en plaçant la notion d'exploitation au centre de la législation sur la traite de personnes. L'auteur présente aussi quelques clarifications sur l'invalidité du consentement des victimes et l'inclusion de la traite transfrontalière aux lois canadiennes sur la traite de personnes.

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International Cooperation Successfully Stops Prolific Canadian Child Sex Offender

SAMANTHA DE VRIES
PhD Student, Simon Fraser University

This article is not about human trafficking but illustrates the importance of international cooperation in a world increasingly connected by migration, travel, and the internet. De Vries highlights how extraterritorial cooperation made possible by treaty agreements and extraterritorial criminal legislation enabled Canada to work with Thailand and other international partners to identify, apprehend, and convict the infamous Canadian child sex offender Christopher Paul Neil (also known as Mr. Swirl, Swirl Face, or Vico). Despite successful convictions in Thailand and Canada, Neil escaped facing charges in Cambodia due to a supposed lack of communication during the investigation and in Vietnam due to an apparent lack of political will.

INTRODUCTION

Although Canada convicted prolific child sex offender Christopher Paul Neil (also known as Mr. Swirl, Swirl Face, or Vico), who is from British Columbia and had been working as an English teacher in Thailand, systemic challenges and missed opportunities led to some of his crimes going unpunished. Neil had documented years of child sexual abuse in videos he disseminated online with his face obscured in a swirl to hide his identity, as well as a collection kept in a storage locker in British Columbia (*R v. Neil*, 2015). This evidentiary trail would serve as concrete evidence for authorities and spark an extensive Interpol investigation (*R v. Neil*, 2015). Canada has made international commitments to protect children through the Convention on the Rights of the Child (1989), to cooperate bilaterally through the *Treaty Between the Government of Canada and the Government of the Kingdom of Thailand on Mutual Assistance in Criminal Matters* (1994), and the extraterritorial jurisdiction subsection 7 (4.1) of the criminal code allowing Canada to prosecute Canadians for crimes committed abroad (*Criminal Code*, 1985). International and bilateral cooperation made possible by such treaty agreements and extraterritorial criminal legislation made it possible for Canada to work with Thailand and other international partners to identify, apprehend, and convict the infamous Canadian child sex offender who served jail time from 2007-2012 in Thailand and Canada (*R v. Neil*, 2015). Neil escaped facing charges in Cambodia due to a supposed lack of communication during the investigation and in Vietnam due to an apparent lack of political will.

METHODOLOGY

To determine how cooperation in transnational child sexual exploitation cases might be improved, a total of 24 participants were interviewed by the author in both Canada and Thailand between September 2017 and February 2018 using various interview styles (de Vries, 2018). Participants included justice officials (i.e. police, prosecutors, and judges) as well as NGO and international organization representatives working on child exploitation in Thailand, to solicit their views of international cooperation in these cases. The Thailand Institute of Justice facilitated interviews in Thailand.

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RESEARCH FINDINGS

Participants frequently identified the Neil case as an international success story involving the collaboration of many partners. According to one participant, Canada cooperated with Interpol police in Germany using Canadian technology to identify the perpetrator in the obscured videos as Canadian citizen Christopher Paul Neil, leading to an Interpol red notice alert. According to another participant, Neil was teaching English to two young brothers in Thailand when Thai media released Neil's photo. The boys' father came forward to Thai authorities identifying Neil as his sons' tutor. Neil was apprehended, charged, prosecuted, and successfully convicted in Thailand where he served four years in prison for child sexual exploitation. Once Neil's time in Thailand was served, he was deported to Canada, entering into a court-imposed recognizance order issued under section 810.1 of the Criminal Code (*R v. Neil*, 2015).

One participant explained that Cambodian officials were frustrated that Neil was not extradited to Cambodia to face charges before being deported to Canada. The reason Neil was not extradited to Cambodia was apparently due to a lack of detail regarding Cambodian victims in the Thai police reports. One Canadian participant stated that the Royal Canadian Mounted Police (RCMP) had contacted Vietnam officials for a proposed visit after Vietnamese children were identified on videos in Neil's storage locker. According to this participant, the Vietnam government refused the invitation, claiming that child sex tourism is not an issue in Vietnam. This participant viewed Vietnam's response as an effort to 'save face' due to the stigma of child sex tourism. As a result, Neil was not charged for abuses carried out in Vietnam despite the evidence.

In 2016 Neil faced trial in Canada for child sexual abuse committed in Cambodia and child pornography charges stemming from Cambodia, Maple Ridge, and Vancouver (*R v. Neil*, 2015). Neil was convicted in Canada in 2016, which was confirmed when the author contacted the New Westminster court directly since a publication ban was in effect on the trial. The RCMP were held in high regard by many participants for sending officers to Southeast Asia to investigate Neil's crimes to secure his conviction in Canada.

The best informal cooperation tool that participants referenced as useful and effective in transnational child sexual exploitation cases were the Foreign Anti Narcotic and Crime working group on Child Exploitation (FANC CE) comprising police officials from 10-15 countries working in Thailand. This informal working group was not organized for a specific case but as a tool for foreign police to combine scarce resources and experiences to more effectively investigate child sexual exploitation committed by foreign individuals. Thai officials are currently not included in FANC CE. The use of NGOs in police operations was viewed as a problem by many foreign police officials; however, it became evident that NGOs in Thailand have resources and funding which allows them to assist local police in operations. This supports Dandurand and Chin's (2014) finding that the involvement of outside agencies in police operations can cause mistrust.

RECOMMENDATIONS

Recommendations by participants regarding the improvement of Canadian responses in these cases included improving interagency cooperation to create more fluid exchanges of information, tracking of transnational child sex offenders, and evaluating passport revocation and other border notification options. Some participants viewed Canada's high-risk notification border system as a solution to tracking known sex offenders. The notification system was put into place to notify border officials when individuals who are designated as high-risk by the national sex offender registry re-enter Canada, likely a result of the Tougher Penalties for Child Predators Act (2015). However, other participants still viewed this as a severe gap in the Canada Border Services Agency's mandate of re-entry only screening for known high-risk child sex offenders.

CONCLUSION

The outcomes in the Christopher Paul Neil (swirl face) case makes it clear that extensive resources, cooperation, and informal and formal mechanisms must be used by all involved countries to ensure the successful apprehension, prosecution, and conviction of offenders. Canada needs to evaluate its domestic control responses and continue to support transnational investigations to protect children abroad, especially when other countries may not be willing to address the issue. Otherwise, some Canadians will continue to exploit children in

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countries they perceive as having weaker legislation and a lack of political will without consequences. ■

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RÉSUMÉ

International Cooperation Successfully Stops Prolific Canadian Child Sex Offender

SAMANTHA DE VRIES
Doctorante, Simon Fraser University

Cet article ne porte pas sur la traite de personnes, mais il illustre l'importance de la collaboration internationale dans un monde de plus en plus connecté par l'entremise de l'immigration, des voyages et d'Internet. L'auteure souligne dans quelle mesure la collaboration extraterritoriale, rendue possible grâce à des traités et à des lois pénales extraterritoriales, a permis au Canada de collaborer avec la Thaïlande et d'autres partenaires internationaux pour identifier, appréhender et condamner un Canadien tristement célèbre, l'agresseur sexuel d'enfants Christopher Paul Neil (aussi surnommé Mr. Swirl, Swirl Face et Vico). Malgré des condamnations en Thaïlande et au Canada, Neil a échappé à des accusations au Cambodge en raison d'un supposé manque de communication pendant l'enquête, ainsi qu'au Vietnam à cause d'un manque apparent de volonté politique.

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Sex Trafficking Victims in Canada: The Need for Sector-Specific Resources

DANIKA C. DECARLO-SLOBODNIK *
Undergraduate student, Department of Economics, Justice, and Policy Studies

*I would like to acknowledge the input and support of Dr. John Winterdyk (Mount Royal University, AB) for this article.

This article explores the scope of human trafficking within Canada and internationally. Available data shows that women make up the highest proportion of victims trafficked for sex, and that this crime is currently the most profitable and common form of exploitation. Respective definitions of sex work and sex trafficking are necessary to ensure that victims are better identified and thus more able to receive the support and resources they need. Both preventative and responsive approaches are necessary to address the far-reaching potential for future exploitation and to support the many victims that are currently being exploited. Although more research is needed, trauma-informed support and safe housing are primary needs for trafficked women in Canada and internationally.

Many terms are used to describe the exploitation of human beings for profit, which occurs domestically, internationally, and transnationally and spans multiple sectors: human trafficking, trafficking in persons, forced labour, modern-day slavery, sex trafficking, etc. These terms aim to describe the process by which a person is trafficked (harbored, received, recruited, transferred, and/or transported), for what reason (e.g., sexual exploitation, debt-bondage, forced labour, etc.), and by which means (e.g., force, deception, and/or threats) (Winterdyk, Perrin, & Reichel, 2010, p. 8). Available data identify trafficking for sexual exploitation as the most common type and indicate that women make up the highest proportion of victims (UNODC, 2018, p. 10). In Canada, 95% of the known and presumed victims from 2009 to 2016 were women (Ibrahim, 2018, p. 5).

Although empirical data is limited, the profitability of human trafficking (HT) is immense. The International Labour Organization (ILO) estimates the profits of HT at 150.2 billion (USD) per year (2014, p. 13). Using a comparative analysis of "old-world" to "modern-day" slavery, Kara (2017) demonstrates that contemporary systems have facilitated trafficking processes—it is now quicker and less expensive to transport people. In Canada, police-reported HT violations have increased steadily from 50 reported incidents in 2009 to 340 incidents of human trafficking in 2016 "where it was the most serious violation" (Ibrahim, 2018, p. 3). These numbers would suggest a relatively small issue; however, the nature of HT makes it a highly unreported crime and an incredibly difficult one to detect, hence the 'dark figure' is likely quite high. More concerning is the fact that few reported cases are prosecuted and most of those that are result in charges being stayed or withdrawn (p. 7).

This article focuses on women as victims of sex trafficking and addresses three aspects of HT in a Canadian context: (1) defining sex work and trafficking, respectively, and explaining why the differentiation matters; (2) the importance of preventative and responsive approaches; and (3) the need for sector-specific resources for victims.

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VOLUNTARY SEX WORK AND FORCED SEXUAL EXPLOITATION FOR PROFIT: IS THERE A DIFFERENCE?

Trafficking discourses on sexual exploitation are split over the agency of sex workers said to voluntarily exchange sexual services for profit (see Kaye & Winterdyk, 2012). Are all persons who sell sex/sexual services trafficked, or can this exchange be considered legitimate, implying voluntary and free choice by the worker? Although the sale of sex is the most intimate and arguably self-violating exchange and something that perhaps not many of us could imagine freely consenting to, we should avoid labelling all such exchanges as exploitation. Weitzer (2007) comments that many higher echelon workers do not want to leave the industry but fear prosecution. The more vulnerable and marginalized 'lower-level' workers are the ones who fit the definition of trafficking victims. A moral agenda does not help either sector, since a push to 'help' women leave an industry they work willingly in wastes time and resources and reinforces a patriarchal structure. Practically speaking, resources must be directed at women who have been coerced in some manner and thus exploited.

The difference between voluntary sex work and coercive sexual exploitation is inadequately defined in Canadian legislation. In 2016, fifty-eight percent of the reported cases involving multiple offences "where human trafficking was the most serious violation often involved prostitution as secondary violations" (Ibrahim, 2018, p. 5). A clear differentiation between sex work and sex trafficking would allow better identification of victims and thus, better targeting of traffickers.

ADDRESSING AND PREVENTING HT: PREVENTATIVE VS. RESPONSIVE APPROACHES

Two distinct approaches can be taken to confront sex trafficking in Canada: preventative and responsive. We need to react and address the vast number of current victims but also prevent future violations. Prevention focuses more on recruitment and ways in which traffickers manipulate circumstances to make a profit. Methods will depend significantly on cultural, social, and economic factors that vary according to geographic location; prevention will look vastly different in an urban Canadian city than in a rural Indian city. Responsive approaches that are trauma-informed encourage healing and empowerment for victims. Although they seem challenging given the large number of existing trafficking victims and the ease with which traffickers avoid detection, they are equally as important as preventative approaches.

In Canada, women make up a high proportion of human trafficking victims—they are vastly overrepresented. Coercion and control are effectively used to keep victims from seeking support. Emotional and psychological manipulation are likely used in conjunction with violence or the threat of violence to ensure compliance. It is easier to coerce victims in this way than to control them using only physical violence, which is not as sustainable. Because of this, women with past trauma, mental health issues, and/or problematic substance/alcohol use may be more vulnerable. In Canada, service providers report many instances of Indigenous women being trafficked (Department of Justice Canada, 2005, p. 10). Such women may be disproportionately targeted by traffickers because of their vulnerability, and the need for responsive approaches is evidenced by the marginalized status of Indigenous people overall and women in particular and by a lack of awareness about sex trafficking in Canada.

The Department of Justice (2005) found that trafficking victims disproportionately struggle with sex-related, drug-related, and mental health issues (p. 17). Problematic substance use and mental health issues further blur the line between agency and coercion. Some women may not want to leave an 'industry' where they can fund their dependencies, and traffickers likely capitalize on this. For those who want to change their circumstances, the barriers to accessing supports include self-stigmatization and more severe manifestations of trauma. Also, emergency shelters seldom have beds that can be reserved before hand, and even if a bed is available, added supports are integral to escaping trafficking. Appropriate housing has been identified as one of the most significant needs for trafficked persons (see Quarterman, Kaye, & Winterdyk, 2012, p. 40). Housing is typically also the biggest need for non-

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trafficked women and men who struggle with mental health, substance use, and the impact of domestic violence; however, the over-riding need for safety, especially if there are criminal proceedings, makes housing a unique issue for trafficking victims. Trauma-informed resources must be available to and accessible by women who lack agency and require support in order to end their exploitation and heal.

TOWARDS SECTOR-SPECIFIC RESOURCES FOR SEX-TRAFFICKING VICTIMS IN CANADA

Transitional housing exists for women fleeing domestic violence in Canada—it should also exist for victims of sex trafficking, but funders need to be made aware of the problem and that will require compelling statistics. Agencies should collect data on interactions between front-line workers and sex-trafficking victims in order to better understand the needs and potentially secure funding specific to this sector of victims. Again, because vulnerable persons are more likely to be victimized, frontline workers such as social/outreach workers, have a higher chance of successful interaction. Service providers need to clarify their understanding of what defines a trafficking victim so that accurate statistics can be recorded.

More information is needed to fill resource gaps in Canada's response to human trafficking involving sexual exploitation. Although housing has been identified as a primary need, more evidence-informed research is needed to determine what other resources (e.g., interpreters, cultural liaisons, legal supports, social/outreach workers, etc.) are necessary to support women in escaping sexual exploitation and addressing the long-term effects of sex trafficking. ■

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RÉSUMÉ

Sex Trafficking Victims in Canada: The Need for Sector-Specific Resources

DANIKA C. DECARLO-SLOBODNIK*
Undergraduate student, Department of Economics, Justice, and Policy Studies, Mount Royal University

* L'auteure souligne la contribution et le soutien de John Winterdyk (Mount Royal University, AB) relativement à la rédaction de cet article.

Cet article explore la portée de la traite de personnes au Canada et à l'étranger. Les données disponibles indiquent que les femmes représentent la plus forte proportion des victimes de traite à des fins sexuelles et que ce crime est actuellement la forme d'exploitation la plus lucrative et la plus fréquente. Il est nécessaire d'établir des définitions distinctes pour le travail du sexe et le commerce du sexe afin de mieux identifier les victimes et ainsi leur fournir le soutien et les ressources dont elles ont besoin. Des approches préventives et réactives s'imposent pour remédier à la grande portée potentielle de l'exploitation future et pour soutenir les nombreuses victimes qui sont exploitées à l'heure actuelle. Bien que des recherches supplémentaires soient requises, du soutien éclairé en matière de traumatismes et de l'hébergement sécuritaire constituent des besoins fondamentaux pour les femmes victimes de la traite au Canada comme partout ailleurs dans le monde.

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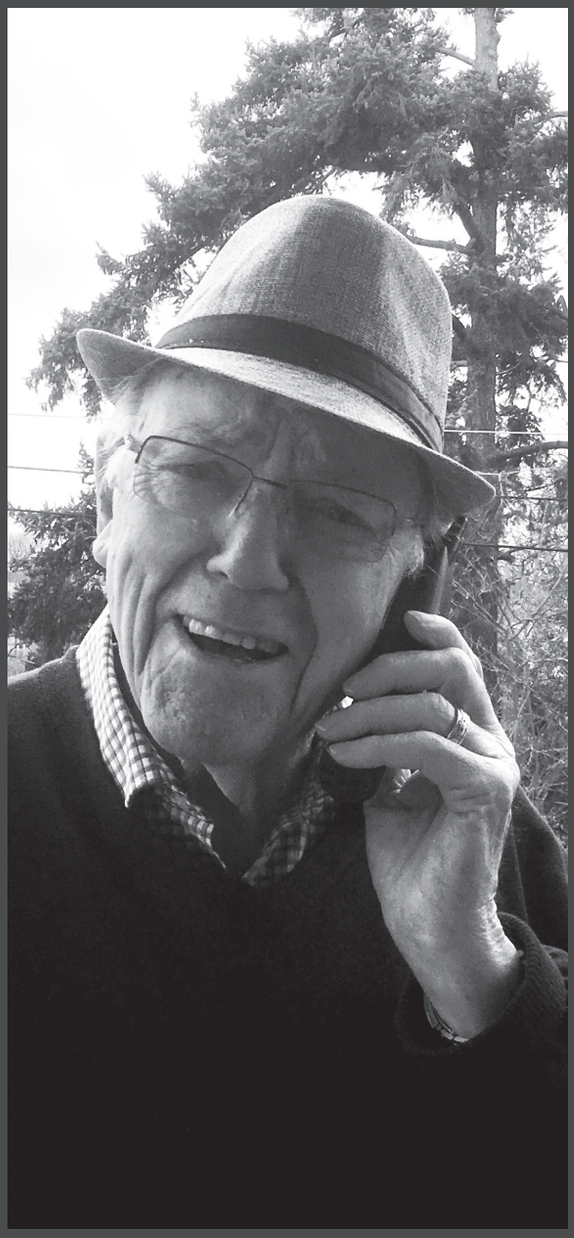
JOHN BRAITHWAITE
REMEMBERED



Dear Lorraine, Family and Friends:

The passing of John was first a great loss to his family, of course. It was, however, also a loss to the Canadian Criminal Justice Association and Canadian corrections ideals.

The Canadian Criminal Justice Association celebrates its 100th anniversary this year. For more than five of those decades John was a member of our Board, our Policy Review Committee and other committees. His contributions were always sought and valued. He always brought his intelligence, experience, humility and good humour to board and committee discussions. We often referred to him half-jokingly as the Canadian Dean of Corrections. In truth he truly was the Dean and at our 2017 Congress he was awarded the Willie Gibbs Award for a lifetime of contributions to the CCJA.

Everyone on our Board knew John from working with him directly and through his reputation. I may have known him the longest however. John was the first person I met before joining CSC almost 50 years ago. I will always remember the advice he gave me then and the wise counsel he shared during my years both at CSC and over the last 15 years of my association with CCJA.

John cannot be replaced but hopefully the wisdom he shared with us all and his vision will light our way forward.

To the Braithwaite Family and friends, please accept the sincere condolences of the Board and staff of the CCJA. We wish you all the best in peace.

Sincerely,
Irving Kulik, Executive Director
On behalf of the CCJA Board of Directors

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India - The Trafficking of Persons Bill, 2018

ANKITA CHAKRABORTY*
Ph.D. Scholar, Rajiv Gandhi School of IP Law, IIT Kharagpur, INDIA.

*This article is based, in part, on the author's dissertation, and the author would like to acknowledge the support and input of her supervisor Dr. Dipa Dube.

This article, by India's Ankita Chakraborty, is not specific to Canada, but offers some important lessons for Canada's effort through an insightful analysis and critique of her country's new Human Trafficking Bill. Generally speaking, Chakraborty reports that the Bill includes several new and progressive initiatives but, among other critiques, retains the age-old 'raid-to-rescue model' wherein police (along with NGOs) engage in pre-planned and organized raids for the rescue and subsequent rehabilitation of trafficked victims.

INTRODUCTION

Human trafficking is the worst form of exploitation of human beings known to humankind and from which no country in the world is free. South-Asia is seen as a region susceptible to human trafficking due to population growth, poverty, and inequitable economic development—especially India, which already has a high rate of sex trafficking and forced labour. According to an NCRB report, the number of recorded cases doubled between 2012 and 2016 (Bureau, 2016), but these figures are grossly understated. According to the Global Slavery Index (2018), "the number of rescued victims is higher than the number of trafficked people" and that "on any given day in 2016 there were nearly 18.3 million people in modern slavery in India", which constitutes a trafficking offence. Despite various legislations and policies, India has been criticized for not complying with the minimum standards and remains on the U.S. Tier Two Watch List (US Dept. of State, 2019). In this backdrop, the recently introduced Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill of 2018 (hereinafter, the Bill) becomes particularly pertinent.

INDIA'S TRAFFICKING OF PERSONS BILL 2018

The Bill is the latest endeavor of Indian Government to provide a consolidated legislative frame in tune with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. The Bill will supersede existing laws in the event of conflict. It creates a new set of agencies to oversee the entire issue of trafficking, including a National Anti-Trafficking Bureau which shall coordinate between the various law enforcement agencies and non-governmental bodies as well as concerned authorities in foreign countries; the State and District Anti-trafficking committees bestowed with the responsibility of preventing vulnerable persons from being trafficked; and National Anti-trafficking Relief and Rehabilitation Committee entrusted with creation and maintenance of a rehabilitation fund to be utilized for the rehabilitation and restoration of victims.

India's new TIP Bill adopts a strict criminal liability stance, thereby criminalizing various activities. It also introduces the concept of "aggravated forms of trafficking", allowing more severe related punishments. The Bill, furthermore, penalizes various activities including trafficking with the aid of media, publication of material related to trafficking, keeping or maintaining places used for trafficking, etc. Forfeiture and attachment of offence-related property is also provided for under the Bill.

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A FLAWED ATTEMPT?

While the Bill includes several new and progressive initiatives, it retains the age-old 'raid-to-rescue model' wherein police (along with NGOs) engage in pre-planned and organized raids for the rescue and subsequent rehabilitation of trafficked victims. Repatriation of victims, with their 'written informed consent', to their country or state of origin is also facilitated and the Bill also incorporates new victim protection measures: monetary relief and compensation, rehabilitation, witness protection, maintenance of confidentiality, in-camera proceedings and video-conferencing, among other. Provisions for special courts are also included, in the aim of facilitating the fast tracking of trafficking cases. India is among the first countries to create such courts.

In spite of its unique features, the Bill has been "critiqued as a draconian criminal law that potentially violates Indian Constitution and international law [and] pays lip-service to survivors of trafficking", thus rendering India "a timid follower of the failed carceral approach to trafficking, based on its prosecution-driven, raid–rescue–rehabilitation model" (Kotiswaran, 2018).

Although the Government of India considers the Bill to be comprehensive; ironically, there is no direct reference to bonded labor and forced labor (Nayak, 2018). While forms of trafficking such as forced marriages, childbearing, or begging are categorized as aggravated forms of trafficking, the Bill does not include trafficking for the purpose of sexual exploitation as an offence category. Such an apparent omission is seen as bizarre, since sex trafficking arguably ranks as the worst form of human degradation. Neither does the Bill specify anything on emerging aspects of trafficking such as skin or organ trading. The gamut of offences covered by existing legislations makes the scenario murkier; for example, under s. 370 of the *Indian Penal Code*, 1860, trafficking for sex work would attract a mandatory minimum punishment of seven years, but under the Immoral Traffic Prevention Act (ITPA), 1956, it would attract only three to seven years (if consensual) or fourteen years (if non-consensual). Further, the predominant focus of the Bill on criminalization poses several notable drawbacks. According to Maria Grazia (2018), the 'over-board and vague nature' of some of the Bill's punitive provisions could lead to blanket criminalization of activities that do not necessarily lead to, or involve, trafficking.

Even though the Bill provides for the rescue, rehabilitation, and reintegration of victims in State or NGO-run Homes, it does not clarify the nature of its relationship with existing victim provisions under the India Trafficking Protection Act, 1986, which mandates Protection Homes and Corrective Homes for survivors of human trafficking. Furthermore, such an institutionalized model has not been very successful in mainstreaming victims; rather, community-based rehabilitation, as proposed in the *Budhadev* case (2011) appears to be a better alternative. But, to date, resources to support community-based rehabilitation initiatives are limited. The ITPA further states that persons sent to protection homes must be given an opportunity to be heard, a requirement not mandated in the present Bill. Nevertheless, the bill does allow an adult victim to make an application to the Magistrate declining rehabilitative services, which could be rejected.

In its current form, although the Bill calls for repatriation the provision seems contradictory to the fundamental right vested under Indian Constitution to move freely through the territory of India and reside/settle in any part thereof. Even though the Bill talks of 'informed written consent', it is questionable whether such consent is possible for victims suffering the trauma of trafficking.

The Bill has also been criticized on the grounds that it overlooks a long-standing concern in the field of trafficking: that is, the probable prosecution of victims as offenders. Though perhaps not for 'serious crimes', it could include minor crimes such as 'soliciting', 'traveling without passport', or 'working without authorization'. Even through prostitution is legal in India, voluntary sex workers may come within the scope of the 'accused' if, for example, they utilize internet services to secure clients (Tandon, 2018). As the Bill adds to a cacophony of existing legislations and bureaucratic maze, it will likely serve to further conflate the efforts of law enforcement agencies in their efforts to effective combat human trafficking.

CONCLUDING REMARKS

India's new Bill, in its present form, lacks human rights considerations and fails to harmonize

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the existing laws. However, though the Bill encompasses some criminalizing impulses, it requires fine tuning in order to accommodate a more holistic and refined approach to solving India's effort to more effectively combat any and all forms of human trafficking in the country. In the end, despite the extensive nature of debate and consultation in informing the new Bill, and its overarching intentions, without the proper backing for prosecution and protection of victims, the scourge of human trafficking in India is not likely to abate soon. ■

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RÉSUMÉ

India - The Trafficking of Persons Bill, 2018

ANKITA CHAKRABORTY*
Boursière au doctorat, faculté de droit de la propriété intellectuelle Rajiv Gandhi, Gandhi School of IP Law, IIT Kharagpur, Inde

*Cet article se fonde en partie sur le mémoire de l'auteure. L'auteure tient à souligner le soutien et la contribution de sa superviseure, Mme Dipa Dube.

Cet article rédigé par une auteure indienne, Ankita Chakraborty, ne traite pas du Canada en particulier. Il présente toutefois des leçons importantes pour les efforts canadiens au moyen d'une analyse et d'une critique éclairées du nouveau projet de loi indien sur la traite de personnes. De manière générale, Mme Chakraborty rapporte que le projet de loi comprend plusieurs nouvelles mesures progressistes, mais maintient le sempiternel modèle «d'opérations de délivrance» où les forces policières (ainsi que les ONG) prennent part à des descentes planifiées et organisées visant à sauver et réhabiliter par la suite les victimes de la traite.

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To honour Canadians who do not work in justice but have made an outstanding contribution over many years to the Canadian criminal justice system.

Honorer des Canadiens et des Canadiennes qui n'œuvrent pas en justice mais qui ont apporté une contribution exceptionnelle pendant de nombreuses années au système de justice pénale canadien.

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To recognize individuals, members or non-members, who have made a significant contribution to the achievement of CCJA objectives.

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This award may be granted to victims or former offenders who have overcome the challenge of their past and made an exemplary contribution towards rehabilitation, restoration and a more humane and effective justice system.

Ce prix peut être décerné à une victime ou à un ex-délinquant qui est parvenu à évacuer les difficultés de son passé et qui a contribué de manière exemplaire au processus de réhabilitation ou de réconciliation ainsi qu'à la réalisation d'un système de justice plus humain et plus efficace.

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To recognize and promote the contribution of theatrical arts to the achievement of a humane and effective criminal justice system.

Reconnaître et promouvoir la contribution des arts du théâtre à la réalisation d'un système de justice pénale humain et efficace.

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Canadian Journal of Criminology and Criminal Justice

Revue canadienne de criminologie et de justice pénale

Canadian Journal of Criminology and Criminal Justice is a forum for original contributions and discussions in the fields of criminology and criminal justice, including the theoretical and scientific aspects of the study of crime and the practical problems of law enforcement, the administration of justice and the treatment of offenders. This Journal is the technical publication of the Canadian Criminal Justice Association (CCJA).

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Ron Langevin, Suzanne Curnoe, Paul Fedoroff, Renee Bennett, Mara Langevin, Cheryl Peever, Rick Pettica, Shameen Sandhu

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THEME - THÈME * The Impact of Artificial Intelligence and Social Media on Legal Institutions
PLACE - ENDROIT * Le Bonne Entente Hotel, Quebec City (QC)
INFORMATION * ciaj-icaj.ca/en/upcoming-programs/2019-annual-conference/

OCTOBER 27 OCTOBRE – NOVEMBER 1 NOVEMBRE 2019

INTERNATIONAL CORRECTIONS AND PRISONS ASSOCIATION (ICPA) 21ST AGM AND ANNUAL CONFERENCE

THEME - THÈME * Strengthening Our Correctional Cornerstones: Rights, Dignity, Safety and Support
PLACE - ENDROIT * Hotel Panamericano, Buenos Ares, Argentina
INFORMATION * icpa.org/events

NOVEMBER 6-9 NOVEMBRE 2019

***CCJA CONGRESS 2019 / **CONGRÈS ACJP 2019**

***Organized jointly by the Canadian Criminal Justice Association (CCJA) and the Société de criminologie du Québec (SCQ)**
****Organisé conjointement par la Société de criminologie du Québec et l'Association canadienne de justice pénale (ACJP)**

THEME - THÈME * 100 Years of Criminal Justice / 100 ans de justice pénale
PLACE - ENDROIT * l'Hôtel Le Concorde de Québec, Quebec City
INFORMATION * www.ccja-acjp.ca/pub/en/news/congress-2019-programme-in-brief/

NOVEMBER 17-19 NOVEMBRE 2019

VJN NATIONAL RESTORATIVE JUSTICE SYMPOSIUM

THEME - THÈME * Diverse Perspectives, Meaningful Solutions
PLACE - ENDROIT * Banff, Alberta
INFORMATION * info@arja.ca

MAY 18-19 MAI 2020

ICFSC 2020: INTERNATIONAL CONFERENCE ON FORENSIC CRIMINOLOGY

THEME - THÈME * All aspects of forensics Forensic Sciences and Criminology
PLACE - ENDROIT * Montreal, Canada
INFORMATION * waset.org/conference/2020/05/Montreal/ICFSC

JUNE 18-19 JUIN 2020

CCLJC 2020: INTERNATIONAL CONFERENCE ON CRIMINAL LAW, JUSTICE AND CRIME

THEME - THÈME * All aspects of HT, slavery, and exploitation
PLACE - ENDROIT * London, United Kingdom
INFORMATION * waset.org/conference/2020/06/toronto/ICCLJC

AUGUST 20-21 AOUT 2020

ICHTSE 2020: INTERNATIONAL CONFERENCE ON HUMAN TRAFFICKING, SLAVERY AND EXPLOITATION

THEME - THÈME * Criminal Law, Justice and Crime and including a premier interdisciplinary platform
PLACE - ENDROIT * Toronto, Ontario
INFORMATION * waset.org/conference/2020/08/london/ICHTSE

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